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TO

JUSTICE OF THE PEACE AND LOCAL GOVERNMENT REVIEW REPORTS

1957—121 J.P.

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ANALYTICAL INDEX TO CASES

A

ADOPTION

Consent of parents; reasonable withholding; parents' consent given by deed; withdrawal before making of order; Adoption Act, 1950, s. 3 (1) (c).—The male applicant was a wealthy planter, formerly domiciled and residing in Jamaica. He and his wife, the female applicant, met there the parents of a child, Margaret, who were missionaries. Margaret was born in June, 1950. In 1951 her mother had a nervous breakdown, and she and her husband went to the United States, leaving Margaret and two older children in the care of the applicants. In 1953 the parents returned to Jamaica, took a house, and lived there with two older children. Margaret remained with the applicants and was still with them. In 1954 the applicants entered into a deed with the parents regarding the adoption of Margaret which provided, *inter alia:* "The adopting parties will immediately upon establishing their residence and domicil in England apply to the High Court of Justice in England . . . for an adoption order authorizing them to adopt the infant pursuant to the Adoption Act, 1950, and any amendment thereof, and the parents do and each of them doth hereby expressly waive any right which they may have to be made parties to or be given notice of the said intended application and hereby and expressly consent to the making of such adoption order as aforesaid in favour of the adopting parties." In August, 1954, the applicants came to England and acquired a domicil here. In 1956 they applied to the High Court for an adoption order. The parents obtained leave to oppose the proceedings and to file evidence. The applicants contended that they had changed their position on the faith of the promise contained in the deed and that the parents were not entitled to oppose an adoption order:—*Held*, the parents were not estopped by the deed from refusing their consent to the adoption order which, in the circumstances, was not unreasonably withheld, and, therefore, the application must be dismissed. (Re F (an infant). Ch.D.) 270

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CASE STATED

Case Stated by quarter sessions; power of appellate court to allow appeal; need to show error of law; Supreme Court of Judicature (Consolidation) Act, 1925, s. 25 (2).—Pursuant to their duty under the National Parks and Access to the Countryside Act, 1949, a local authority prepared and published a provisional map which showed a public footpath running over land belonging to the appellants. The appellants applied to quarter sessions under s. 31 (1) (a) of the Act for a declaration that at the relevant date, i.e., October 5, 1952, there was no public right of way over the land. The appeal committee of Quarter sessions refused a declaration and the appellants asked them to State a Case pursuant to s. 31 (7). Quarter sessions, after stating the facts proved or admitted, stated the following conclusion: (i) that the local authority had failed to prove that the footpath must be deemed to have been dedicated as a highway by virtue of s. 1 of the Rights of Way Act, 1932, but (ii) that the local authority had on the evidence satisfied them (quarter sessions) that the footpath had been dedicated as a highway at common law at some time before 1899. The question of law for the opinion of the High Court was (a) whether there was any evidence to support conclusion (ii), and (b) whether on the facts found quarter sessions were entitled in law to come to that conclusion. On the second question the appellants submitted that under s. 25 (2) of the Supreme Court of Judicature Act, 1925, on an appeal from quarter sessions the appellate court might draw any inference of fact which might have been drawn in the court of quarter sessions, and that the Court of Appeal was entitled to review the conclusion reached by quarter sessions even if there were no error of law, and in the present case should do so:—*Held*, assuming that the Case Stated under the Act of 1949 was an appeal within the meaning of s. 25 (2) of the Judicature Act, 1925, the appellate court could only interfere if the conclusion of quarter sessions appealed from could be said to have involved some mis-direction, some error of law, and, as that was not the case here, the appeal must be dismissed. (Chivers & Sons, Ltd., and Others *v.* Cambridge County Council. C.A.) 284

CHILDREN & YOUNG PERSONS

Approved school order; residence of offender at time of order; offender resident for number of years in institutions; authority where offender's parents lived named in order; proper conclusion that offender's residence was unknown; limitation on right of appeal by authority named; Children & Young Persons Act, 1933, s. 70 (2).—By s. 70 (2) of the Children and Young Persons Act, 1933: "Every approved school order, other than an order made on the application of a poor law authority in their capacity as such or made by reason of the commission of an offence under s. 10 of this Act . . . shall name the local authority within whose district the child or young person was resident, or if that is not known, the local authority . . . within whose district the offence was committed . . . : Provided that —(*a*) in determining for the purposes of this subsection the place of residence of a child or young person, any period during which he resided in any place as an inmate of a school or other institution . . . shall be disregarded." In 1944 a juvenile court made an order committing a boy, then aged two years, who was living with his parents at C. in the county of L. to the care of the education committee of the

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L. county council until he should reach the age of 18. Until December 20, 1955, the boy resided in a number of institutions for which the L. county council was the authority. On December 20, 1955, a juvenile court committed him to an approved school for an offence committed in a children's home within the county of L. In 1947 the boy's parents had left C. and come to reside in the borough of B., but the boy never resided there. The juvenile court, acting under s. 70 (2), named the corporation of B. as the local authority within whose district the boy was resident. On appeal by the corporation of B. under s. 90 (2) of the Act against the order:—*Held*, that, as the boy's parents no longer lived at C. (the place where he had lived with them) and as the boy's residence in institutions was for the purpose of s. 70 (2) to be disregarded, the justices should have come to the conclusion that his residence was unknown and should have named in the order the local authority within whose district the offence was committed, but, as s. 90 (2) did not entitle the corporation of B. to appeal on the ground that the boy's residence was in the district of another authority, the existing order must stand. (Barnsley Corporation *v.* Lancashire County Council. Q.B.D.) 13

COMPULSORY PURCHASE

1. Compensation; disturbance; surveyor's fees, solicitors' costs, travelling expenses, etc. reasonably incurred by owner-occupier in finding and purchasing another house for occupation; Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2 (1), (5).—The rules for the assessment of compensation on a compulsory purchase which are contained in the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2, provide that: "In assessing compensation . . . (1) No allowance shall be made on account of the acquisition being compulsory: (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise . . . (5) Where land is . . . diverted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if . . . reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement: (6) The provisions of r. (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land. The owner-occupier of a house which was compulsorily acquired found another house which she liked, but her surveyor reported that it was unsatisfactory, and she did not purchase it. Later, she purchased another house in which to live. Her total expenditure on travelling expenses, surveyor's fees, and legal costs in respect of both houses amounted to £241 10*s.* 1*d.*, and the Lands Tribunal awarded her this sum as compensation for disturbance in addition to the value of the land compulsorily acquired with vacant possession, surveyor's fees, and legal costs in connexion with its acquisition, her removal expenses, and the cost of alterations to curtains, etc. On appeal by the acquiring authority against the award of the £241 10*s.* 1*d.*:—*Held*, the sum of £241 10*s.* 1*d.* was expenditure reasonably incurred in getting another house, and so could fairly be regarded as a direct consequence of the compulsory acquisition; the mere fact that expenditure for which compensation was claimed involved some element of reinstatement did not disqualify it for being allowed as compensation for

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disturbance, if it was otherwise proper so to be allowed; and, therefore, the £241 odd was properly awarded as compensation for disturbance, although the case did not fall within r. (5). *Per* DENNING, L.J.: The case did not fall within r. (1) which is "directed only to the added sop of 10 per cent. which in the old days was always given to soften the blow of compulsory acquisition." (Harvey *v.* Crawley Development Corporation. C.A.) 166

2. Notice to treat; validity; abandonment of notice; acquisition of land for purpose other than that contemplated by the order; service of notice; exercise of power of acquisition; Lands Clauses Consolidation Act, 1845, s. 123.—In 1937 the corporation proposed to develop an island site, and in December, 1937, made a compulsory purchase order which was subsequently confirmed by the Minister of Transport and incorporated provisions, including s. 123 of the Lands Clauses Consolidation Act, 1845, its purpose being to widen, enlarge and improve certain streets, improve and develop the adjacent lands, and build a market hall within the borough. On January 4, 1939, the corporation served a notice to treat on K, a poulterer and fishmonger, who owned shop premises which were subject to compulsory purchase under the order of 1937. Negotiations having ensued, in July, 1939, compensation was agreed except compensation for loss of trade and disturbance. On September 13, 1939, K, submitted a draft contract, but in view of the war of 1939-1945, the matter was not proceeded with. In 1951 negotiations in an endeavour to reach an agreement took place for the acquisition of a part of K's premises comprised in the notice to treat, but no agreement was reached. In 1954 the corporation considered another and considerably modified development scheme for improvement of the island site which did not include the building of a market hall and involved much less road widening than was intended at the time of the order of 1937, but the scheme was not approved by the corporation. In 1955 another proposal for development was considered, but this proposal was very different from that of 1937, and no scheme was finally settled. K's premises would be required for any scheme of development and improvement of the island site. The corporation having intimated that it desired to purchase K's premises under the order of 1937 at the price then current, the plaintiffs, the personal representatives of K, who had died, claimed that the notice to treat of January 4, 1939, was no longer valid and that the corporation had no power under the order of 1937 compulsorily to acquire the premises:—*Held*, (i) as on the evidence the corporation had abandoned the order of 1937, and as that order had been made for a specific development and so could not now be used for a general development as yet undefined but clearly different, the notice to treat of January 4, 1939, was no longer effective and the corporation had no power under the order of 1937 compulsorily to acquire the premises. Richmond v. North London Ry. Co. (1868) 33 J.P. 86; and Tiverton & North Devon Ry. Co. v. Loosemore (1884) 48 J.P. 372, applied. (ii) service of the notice to treat of January 4, 1939, was an exercise of a compulsory acquisition within s. 123 of the Lands Clauses Act, 1845, but that section did not operate to render the power invalid, such power having been exercised within the period prescribed by that section. Salisbury (Marquis) v. Great Northern Ry. Co. (1852) 17 Q.B. 840 applied. (Grice and Another *v.* Dudley Corporation. Ch.D.) 466

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3. War damaged building; plans for reconstruction with alterations approved by War Damage Commission; reconstructed building of greater value than demolished building identically reinstated; assessment of compensation; Town and Country Planning Act, 1947, s. 53 (1) (*a*).—By s. 53 (1) of the Town and Country Planning Act, 1947, it is provided: "Where an interest in land the value of which is to be ascertained in accordance with the provisions of s. 51 of this Act is an interest in a hereditament . . . which has sustained war damage, and any of that damage has not been made good at the date of the notice to treat, then if the appropriate payment under the War Damage Act, 1943, would, apart from the compulsory purchase or apart from any direction given by the Treasury under s. 20 (3) (*b*) of that Act, be a payment of cost of works—(*a*) the value of the interest for the purposes of the compensation payable in respect of the compulsory purchase shall, subject to the provisions of this section, be taken to be the value which it would have if the whole of the damage had been made good before the date of the notice to treat . . ." The claimants, Associated London Properties, Ltd., owned certain property which during the years 1940 to 1944 suffered heavy war damage resulting in a total loss. On May 4, 1945, the War Damage Commission informed the claimants that a cost of works payment would be made, erroneously stating that the war damage had not resulted in a total loss. In January, 1953, the commission informed the claimants that they had determined to make a cost of works payment notwithstanding that there was a total loss. In 1945 the claimants submitted plans to the commission for substituting for the destroyed building a smaller building in a modern style which, though it would cost less, would result in a greater market value, than an identical reinstatement of the demolished building. These plans were approved by the commission. In November, 1946, a compulsory purchase order was made in favour of the local authority which, on May 9, 1950, served a notice to treat on the claimants. The question for the determination of the court was whether the claimants were entitled to a value payment or a cost of works payment, and whether the value had to be ascertained on the assumption that the old building had been reinstated without alteration, or on the assumption that the plans had been carried out as approved by the commission:—*Held*, the appropriate payment within the meaning of s. 53 (1) was a cost of works payment on the basis that the work had been done in accordance with the plans agreed by the commission. (Paddington Borough Council v. War Damage Commission; Associated London Properties Ltd. *v.* Paddington Borough Council. C.A.) 24

CRIMINAL LAW

1. Affray; direct evidence of any person being put in terror unnecessary; circumstances such that reasonable people might have been frightened; availability of defence of self-defence.—Common law riot; need of evidence that any person actually put in terror; ingredients of offence.—On a charge of making an affray in a public place it is not necessary that there should be a direct evidence of any subject of the Queen having been put in terror. It is sufficient if the circumstances are such that reasonable persons might have been intimidated or frightened. Inasmuch as a person who merely defends himself and does not attack is not guilty of an affray, the defence of self-defence is available to a person charged with this offence, and it is a misdirection to tell the jury that it is immaterial who started the

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fight or who was to blame or that no question of self-defence can arise. *Quaere:* whether on a charge of common law riot it is necessary to call at least one person of reasonable courage and firmness to prove that he was alarmed by the force or violence displayed. *Dicta* in Field v. Metropolitan Police Receiver (1907) 71 J.P. 494, doubted. (R. *v.* Sharp & Another. C.C.A.) 227

2. Assault; evidence; corroboration; evidence of person assaulted; witness alleged to be implicated in assault.—On a charge of assault, corroboration of the evidence of the person alleged to have been assaulted is not required in law or as a rule of practice. Where, however, two British officers were charged with assaulting a Cypriot subject who was in custody, and the prosecution relied on the evidence of the person alleged to have been assaulted whose body bore bruises consistent with an assault and also on the evidence of a British private soldier who was alleged to have taken part in the assault, and the Judge-advocate warned the court that the soldier was a tainted witness and that it was desirable that the court should look for corroboration of his evidence:—*Held*, that the direction of the Judge-advocate was correct, and that, taking into consideration the medical evidence with regard to the nature of the injuries of the person alleged to have been assaulted, there was ample evidence to support the conviction of one of the officers which had been confirmed by the confirming officer. (R. *v.* Linzee; R. *v.* O'Driscoll. C.-M.A.C.) ... 59

3. Capital murder; implied malice; killing due to voluntary act causing grievous bodily harm; Homicide Act, 1957, s. 1 (1).—By s. 1 (1) of the Homicide Act, 1957: "Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offence." By the above subsection the doctrine of constructive malice is abolished, i.e., the principle that the causing of death in the course of committing some felony of violence (e.g. rape) other than that which results in the killing amounts to murder, but the subsection does not abolish the doctrine of implied malice, and the malice aforethought requisite to constitute the crime of murder may still be implied from a voluntary act of the prisoner inflicting grievous bodily harm on and causing the death of the deceased. When, therefore, in the course of committing a burglary, the appellant attacked the householder, an elderly woman, with his fists and there was also evidence that he had kicked her in the face and she died from the injuries inflicted, and the trial Judge directed the jury that malice aforethought would be implied if the victim had been killed by a voluntary act of the appellant done with intent to cause her grievous bodily harm:—*Held*, the direction was right. (R. *v.* Vickers. C.C.A.) 510

4. Conspiracy; conspiracy to commit crime abroad; indictment in England.—The respondents were convicted, *inter alia*, on a count of conspiracy to defraud by causing a department of the Federal Republic of Germany, known as Z.A.K., to grant licences to export certain metals from the Republic of Germany by furnishing to Z.A.K. forged documents, purporting to be "end-user certificates," given by the Secretary of the Department of Industry and Commerce of the Republic of Ireland, certifying that such metals would be

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exported into and would not be re-exported from the Republic of Ireland. The German government would not have granted licences for the export of the materials in question to Eastern European countries. In fact, the metals were to be exported to Czechoslovakia, Poland, Rumania and the U.S.S.R. On appeal to the Court of Criminal Appeal, the respondents' convictions on this count were quashed. On appeal by the Crown:—*Held*, a conspiracy to commit a crime abroad was not indictable in this country unless the contemplated crime was one for which an indictment would lie in this country, and, therefore, a charge of the conspiracy alleged in the present case, being a conspiracy to attain a lawful object by unlawful means rather than to commit a crime, was not triable in this country. (Board of Trade *v.* Owen and Another. House of Lords) 177

5. Corruption; ingredients of offence; Prevention of Corruption Act, 1906, s. 1 (1).—On a charge of accepting a bribe, contrary to s. 1 (1) of the Prevention of Corruption Act, 1906, the prosecution are required merely to prove that the accused person did receive a bribe as an inducement to show favour. They are not required further to prove that he actually did show favour in consequence of having received the bribe. (R. *v.* Carr. C.-M.A.C.) 58

6. Demanding money with menaces; desirability of committal for trial to Assizes; Larceny Act, 1916, s. 30.—Charges of demanding money with menaces, contrary to s. 30 of the Larceny Act, 1916, should be committed for trial to Assizes and not to quarter sessions, unless there is some compelling reason to take the latter course. (R. *v.* Hacker. C.C.A.) 223

7. Evidence by prisoner against co-prisoner; right of co-prisoner's advocate to cross-examine; Criminal Evidence Act, 1898, s. 1 (*f*) (iii); Case Stated; conviction wrong in law; no jurisdiction to order re-trial; Summary Jurisdiction Act, 1857, s. 6; Magistrates' Courts Act, 1952, s. 87 (1).—The appellant and a co-defendant gave evidence on his own behalf which incriminated the appellant, and the appellant's solicitor desired to cross-examine the co-defendant, but the justices declined to allow him to do so. The justices convicted the appellant and acquitted the co-defendant. On appeal by the appellant by Case Stated:—*Held*, (i) that his conviction must be quashed, since, in refusing to allow his solicitor to cross-examine the co-defendant, the justices had departed from the ordinary principles of justice, and the conviction was, therefore, "wrong in law" within the meaning of s. 87 (1) of the Magistrates' Courts Act, 1952; (ii) the proceedings being by Case Stated, and not by *certiorari*, the court had no power, under, either s. 6 of the Summary Jurisdiction Act, 1857, or s. 87 (1) of the Magistrates' Courts Act, 1952, to order a re-trial, and had, therefore, no other course open to them than to quash the convictions. (Rigby v. Woodward. Q.B.D.) 129

8. Explosive substance; possession; knowledge of defendant; extent of onus of proof on prosecution; Explosive Substances Act, 1883, s. 4 (1). —On a charge of possessing an explosive substance, contrary to s. 4 (1) of the Explosive Substances Act, 1883, the prosecution are required to prove both that the prisoner knew that he had the substance in his possession and also that he knew that it was an explosive substance.

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In many cases, however, the jury, once they are satisfied that the first requisite has been proved and also that it has been proved that the substance was in the prisoner's possession in such circumstances as to give rise to a reasonable suspicion that he did not have it in his possession for a lawful object, will infer the second requisite. R. v. Dacey [1939] 2 All E.R. 641 not followed. (R. v. Hallam. C.C.A.) 254

9. Indictment; count for manslaughter only; verdict of Not Guilty of manslaughter; failure of jury to agree on alternative verdict of dangerous driving; direction of Judge that issue of dangerous driving be tried at quarter sessions; refusal of quarter sessions to accept jurisdiction; Road Traffic Act, 1934, s. 34.—The defendant was indicted at Assizes on an indictment which contained only one count, which was for manslaughter. The jury returned a verdict of Not Guilty of manslaughter, but were unable to agree on a verdict with regard to dangerous driving, which the Judge had directed them was open to them as an alternative verdict. The Judge directed that that issue be tried at quarter sessions, but the recorder declined to accept jurisdiction on the ground that the indictment before him was an indictment for manslaughter:—*Held*, that the recorder was right in declining jurisdiction. (R. *v.* Shipton. *Ex parte* Director of Public Prosecutions. Q.B.D.) 78

10. Indictment; settling of indictment; notification of alterations and additions; inspection by prosecution and accused. (Practice Note. C.C.A.) 48

11. Larceny; dustmen; refuse taken from dustbins; refuse property of corporation when put in dustcart.—The appellants, who were dustmen employed by a corporation, were convicted by justices of larceny of refuse collected by them from factories and other places. An agreement, of which the appellants were aware, between the union to whom the appellants belonged and the corporation provided that any sums obtained from the sale of refuse should be divided proportionately between the corporation and the dustmen. This agreement was exhibited at the corporation's premises, as were also notices (which the appellants had read) warning dustmen that if, apart from that agreement, they appropriated refuse which they had been sent out to collect, criminal proceedings would be taken. The appellants collected from dustbins refuse, including rags and wool, which they placed in sacks. In the case of some, but not all, of the appellants, there was a specific finding by the justices that the sacks belonged to the corporation. In every case the sacks were placed in one of the corporation's dustcarts. The appellants, instead of handing over the sacks containing the refuse to the corporation's officials, abstracted the refuse and sold it on their own behalf:—*Held*, that (i) the refuse, having been placed by the owners of the premises in the dustbins for the specific purpose of being collected by the local authority, had not been abandoned by the owners when it was placed in the dustbins; (ii) as soon as the refuse was placed in a dustcart belonging to the corporation, it passed into the constructive possession of the corporation; (iii) in view of the appellants' knowledge of the terms of the agreement and the notices, there was abundant evidence on which the justices could come to the conclusion that the appellants had *animus furandi* when they appropriated the refuse, and the appellants were, therefore, properly con-

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victed. (Williams and Others *v.* Phillips; Roberts and Others *v.* Phillips. Q.B.D.) 163

12. Larceny; taking; sacks loaded on lorry; additional number loaded by mistake; driver unaware of mistake till time of delivery; *animus furandi* of additional sacks then formed; liability of driver to be convicted; Larceny Act, 1916, s. 1 (1).—At a magistrates' court an information was preferred by the prosecutor alleging that the defendant had stolen eight sacks of pig meal, valued at £7 1*s.* 6*d.*, the property of C. & B. Ltd. The justices found that on September 12, 1956, the defendant who was a lorry-driver, was instructed by his employers to collect from C. & B., Ltd., and to deliver to G. H. J. a quantity of feeding stuffs. By an error on the part of C. & B., Ltd., eight sacks of pig meal in addition to the authorized consignment were loaded on the lorry. The defendant arranged the load on the back of the lorry, but he did not count the number of sacks, nor was he aware of the excess. When he came to deliver the foodstuffs he discovered for the first time the additional sacks. It was then that he decided to appropriate those sacks, although he knew he had no right to them. The justices dismissed the information and the prosecution appealed:—*Held*, distinguishing Moynes v. Coopper (1956) 120 J.P. 147, that the defendant came to know of the presence of the excess sacks at the time of delivery, and, accordingly, the "taking" of those sacks occurred at that time; and that, as at that time the defendant had *animus furandi*, he was guilty of larceny, and the case must be remitted to the justices with a direction to convict. (Russell *v.* Smith. Q.B.D.) 538

13. Murder; defence; provocation; withdrawal from jury; miscarriage of justice.—The appellant was charged with murder and at his trial he relied on the defences of self-defence and provocation based on his allegation that he was assaulted by the deceased man. The trial Judge, in his summing-up, withdrew the defence of provocation from the jury and the jury rejected the defence of self-defence. On appeal against conviction on the ground that the Judge was wrong in withdrawing the defence of provocation from the jury:—*Held*, every man on trial for murder had the right to have the issue of manslaughter left to the jury if there was any evidence on which such a verdict could be given and to deprive him of that right must of necessity constitute a grave miscarriage of justice; in the present appeal, the fact that the jury rejected the defence of self-defence did not necessarily mean that the evidence for the defence was of such a kind that, even if not accepted in its entirety, it might not have left them in reasonable doubt whether the prosecution had discharged the onus of proving that the killing was unprovoked; and, therefore, the appeal must be allowed and the case remitted with a direction to record a verdict of manslaughter. (Bullard *v.* R. Privy Council) ... 576

14. Murder; diminished responsibility; burden of proof; preponderence of probability; direction to jury; Homicide Act, 1957, s. 2 (2).—Where the defence of diminished responsibility under s. 2 of the Homicide Act, 1957, is raised, the burden of proof placed on the defence is that of establishing a preponderence of probability, and the Judge should direct the jury on the difference between the burden of proof placed on the defence in establishing this defence and that resting on the prosecution to establish guilt. (R. *v.* Dunbar. C.C.A.) 506

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15. Practice; view by jury; presence of Judge.—A view coupled with a demonstration is part of the evidence, and, therefore, at a criminal trial it is wrong for a view with witnesses to be had in the absence of the Judge. R. v. Martin (1872) 36 J.P. 549, considered. (Tameshwar and Another *v.* Reginam. Privy Council) 477

16. Prostitution; living on earnings of prostitute; room knowingly let to prostitute at inflated rent; liability of lessor to be convicted; Vagrancy Act, 1898, s. 1, as amended by Criminal Law Amendment Act, 1912, s. 7 (1).—Where a person lets a room to a prostitute at an inflated rent for the express purpose of allowing her to ply her trade there, it is open to a jury to convict that person of knowingly living wholly or in part on the earnings of prostitution, contrary to s. 1 of the Vagrancy Act, 1898 (as amended); R. v. Silver (1956) 120 J.P. 233, not followed on this point. (R. *v.* Thomas. C.C.A.) ... 338

17. Self-defence; burden of proof.—Where the defence of self-defence is raised the burden of proving the guilt of the accused remains on the prosecution, though the prosecution are not required to give evidence-in-chief to rebut a suggestion of self-defence before that issue is raised or to give any evidence on the issue at all. If, on a consideration of the whole of the evidence, the jury are left in doubt whether the act was done in necessary self-defence, the accused is entitled to be acquitted. Direction of BOSANQUET, J., in R. v. Smith (1837) 8 C. & P. 160, 162 disapproved. (R. *v.* Lobell. C.C.A.) 282

18. Sentence; imprisonment to begin on expiration of corrective training; Criminal Justice Act, 1948, s. 21 (1).—A sentence of imprisonment to begin on the expiration of a sentence of corrective training already being served ought not to be passed. When it becomes necessary to pass a further substantial sentence on a prisoner already undergoing a sentence of corrective training, the proper course is to pass a sentence of imprisonment longer than the unexpired portion of the sentence of corrective training and to run concurrently with it, so that the sentence of imprisonment can take effect instead of the sentence of corrective training. (R. *v.* Hedgecock. C.C.A.) 450

19. Sentence; persistent offenders; statutory notice; one conviction and sentence of preventive detention only set out; Criminal Justice Act, 1948, s. 23 (1) (2).—To be valid a notice under s. 23 of the Criminal Justice Act, 1948, must set out all the previous convictions and sentences on which it is intended to rely as qualifying the prisoner for preventive detention, corrective training, or a supervision order, as the case may be. Where, therefore, a notice under s. 23 (1) stated that it was intended to prove "Convictions and sentences as follows:—Glamorgan Assizes, in 1951: Larceny—four cases of stealing pedal cycles. Larceny of tools. Seven years' preventive detention," and the notice was treated as valid, and as qualifying the appellant for preventive detention, and the appellant was sentenced to preventive detention:—*Held*, that the notice was defective in that it did not set out three previous convictions in respect of two of which a sentence of Borstal training, imprisonment, or corrective training had been passed, and, accordingly, it was not competent to the court to pass the sentence of preventive detention, which must be quashed. (R. v. Evans. C.C.A.) 49

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20. Sentence; probation order; breach; fresh order made by supervising court for three years from date of fresh order; original order not discharged; validity of fresh order; Criminal Justice Act, 1948, s. 3 (1) s. 6 (3), sch. I, para. 3, proviso (a).—In December, 1955, a girl aged about 19 was convicted at P. magistrates' court of larceny and was put on probation for two years. She committed breaches of the probation order, and on May 4, 1956, the Havant magistrates' court, the supervising court for the district in which she was residing, made a fresh probation order for three years from that date. She committed a breach of that order also and was brought back to the Havant magistrates' court, who then committed her for sentence to quarter sessions. Quarter sessions imposed a sentence of borstal training. A motion for *certiorari* was made on behalf of the girl to quash the probation order of May 4, 1956, on the ground that, the original probation order not having been discharged, the girl was, in effect, put on probation for a period longer than three years, contrary to s. 3 (1) of, or sch. I, para. (3), proviso (a), to, the Criminal Justice Act, 1948:—*Held*, that the order of May 4, 1956, was valid as (a) under s. 6 (3) of the Act of 1948 the magistrates' court had power to deal with the girl in any manner in which they could have dealt with her if she had just been convicted of the original offence and this included putting her on probation for three years from May 4, 1956; and (b) the new order did not purport to amend the original order, and, therefore, was not affected by the provisions of sch. I, para. 3, proviso (a). *Held*, further, that the original order, though not formally discharged, became ineffective on the making of the new order. (R. *v.* Havant Justices. *Ex parte* Jacobs. Q.B.D.) 197

21. Sentence; supervision order; convictions and sentences "on at least two previous occasions"; separate appearances at separate courts of quarter sessions or Assizes required; breach of probation order; sentence for original offence and for subsequent offence during probation period passed at same time; Criminal Justice Act, 1948, s. 22 (1) (a).—On August 25, 1952, the appellant was placed by a court of quarter sessions on probation for two years. He committed a further offence during the period of probation, and, on August 23, 1954, he was sentenced by a court of quarter sessions to 12 months' imprisonment for that offence and to a concurrent term of 12 months' imprisonment for the original offence for which he had been placed on probation. On February 2, 1957, the appellant was sentenced by a court of quarter sessions to eighteen months' imprisonment for unlawful wounding, and the court made a supervision order under s. 22 of the Criminal Justice Act, 1948:—*Held*, that the words "at least two previous occasions" in s. 22 (1) (a) referred to two separate appearances each at a separate court of quarter sessions or Assizes; since, by virtue of s. 12 (1) of the Act, the conviction in respect of which the probation order was made did not rank as a conviction until the appellant was subsequently sentenced in respect of it, when, in 1957, he appeared before the same court by which he was convicted in respect of his last offence, he had not been convicted "on two previous occasions" within the meaning of s. 22 (1); and, therefore, the supervision order had not been validly made and must be quashed. *Per curiam*: Where there is an appeal to the Court of Criminal Appeal against sentence in a case which has been sent to quarter sessions under s. 29 of the Magistrates' Courts Act, 1952, it would be convenient for the committal order with the

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sentence indorsed thereon to be sent to this court for rectification if the sentence should be altered, just as is done with an indictment. (R. v. Perfect. C.C.A.) 353

22. Statutory malice; maliciously causing noxious thing to be taken; coal gas; larceny of gas meter; fracture of main during larceny; seeping of gas to adjoining house; occupant of adjoining house affected; meaning of "maliciously"; mere wickedness not sufficient; Offences Against the Person Act, 1861, s. 23.—The use of the word "maliciously" in the definition of any statutory crime postulates foresight of consequence. It must be taken, not in the old vague sense of wickedness in general, but as requiring either (a) an actual intention to do the particular kind of harm that in fact was done, or (b) recklessness whether such harm should occur or not. It is not limited to, nor does it require, any ill-will towards the person injured. The appellant broke open a gas meter in a house, took it away, and stole its contents. In doing so he unknowingly fractured the gas main, and, although there was a stop tap within two feet of the meter, he did not turn off the gas. As a result of the fracture of the main, coal gas seeped through the cellar wall to the house next door, and W, an occupant of the house, who was asleep in bed, inhaled a considerable amount of coal gas into her lungs, her life thereby being endangered. The appellant was charged under s. 23 of the Offences Against the Person Act, 1861, with having unlawfully and maliciously caused W to take a certain noxious thing, namely, coal gas, so as thereby to endanger her life, and the Judge directed the jury that "'malicious' for this purpose meant 'wicked'—something which he has no business to do and perfectly well knows it":—*Held*, that it should have been left to the jury to decide whether, even if the appellant did not intend the injury to W, he foresaw that the removal of the meter might cause injury to someone, but nevertheless removed it; that there had been a restriction in law on the meaning of the word "maliciously"; and that the conviction must be quashed. (R. v. Cunningham. C.C.A.)... ... 451

23. Trial; plea; fitness to plead; issue raised by prosecution; right of defence to require the general issue to be tried before issue of fitness to plead; Criminal Lunatics Act, 1800, s. 2:—Before the defendant, who was indicted for murder, had entered a plea on being arraigned, the Crown raised the question of his fitness to plead and applied for this issue to be tried as a preliminary issue. The defence submitted that this issue should not be tried as a preliminary issue on the application of the Crown if, as in this case, the defence desired the general issue to be tried first, the provisions of s. 2 of the Criminal Lunatics Act, 1800, not being mandatory:—*Held*, the question of the defendant's fitness to plead must be tried, as a preliminary issue, because an insane person could not be tried; and, on the court's attention being drawn to the fact that there was this preliminary issue, the court was bound to try it. R. v. Roberts (1953) 117 J.P. 341, not followed. (R. *v.* Beynon. Cardiff Asz.) 366

D

DOCKS

Safe means of access; ship's accommodation ladder or gangway to be provided where reasonably practicable; ladder to be provided in other cases; breakdown of gangway provided by owner; devolution

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of duty on persons employing labour; provision of ladder; onus of proof; Factories Act, 1937, s. 130 (1); Dock Regulations, 1934, reg. 9, reg. 50.—By reg. 9 of the Docks Regulations, 1934: "If a ship is lying at a wharf or quay for the purpose of loading or unloading or coaling, there shall be safe means of access for the use of persons employed at such times as they have to pass from the ship to the shore or from the shore to the ship as follows:—(a) Where reasonably practicable the ship's accommodation ladder or a gangway or a similar construction . . . (b) In other cases a ladder of sound material and adequate length which shall be properly secured to prevent slipping." During the unloading of a ship at a dock a gangway was provided by the owners of the ship as a safe means of access between the ship and the quay. The gangway became unserviceable and was removed. The owners then provided in its place a wooden ladder which was of sound material and was properly secured to prevent slipping. An inspector visited the ship and requested the appellants, master stevedores whose employees were engaged in unloading the ship on whom under reg. 50 the duty of supplying safe means of access devolved on failure by the owners to do so, to provide another gangway. The appellants took no steps to do so, and they were convicted of contravening reg. 9. The appellants called no evidence that it was not reasonably practicable for them to provide another gangway:—*Held*, that, the onus being on the appellants to prove that it was not reasonably practicable for them to comply with reg. 9 (a), and as they had not discharged that onus, the conviction was right. (Walter Wilson & Son, Ltd. *v.* Summerfield. Q.B.D.) 8

H

HIGHWAYS

1. Repair; bridge carrying road over railway; new stretches of road joining existing road to bridge carried along embankment; embankment slipping into railway cutting; extent of liability of railway company's successors to repair embankment and road; Railways Clauses Consolidation Act, 1845, s. 46.—By the Railways Clauses Consolidation Act, 1845, s. 46, where a railway company builds a bridge to carry a turnpike road over a railway, "such bridge, with the immediate approaches, and all the other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company." In 1860 a railway company, in pursuance of a private Act which incorporated the provisions of the Act of 1845, constructed an extension to their railway which crossed a turnpike road, now a county highway. The company built a bridge to carry the road over the railway, and it was also necessary, in order to join the turnpike road to the bridge, to construct on either side of the bridge new stretches of road which ran along the top of an embankment formed by the railway cutting. Recently a part of the embankment about a quarter of a mile away from the bridge started to slip into the cutting, thereby causing damage to the road. The plaintiffs, as the highway authority, sought a declaration that the defendants, the successors in title to the railway company, were liable to maintain the stretch of road and the embankment as constituting part of the "immediate approaches" to the bridge within s. 46 of the Act of 1845:—*Held*, s. 46 of the Act of 1845 was concerned with bridges, the immediate approaches to bridges, and the necessary works connected with bridges; that part of the embank-

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ment and road which was in disrepair was too distant to be the "immediate approaches" to the bridge; the embankment existed for the protection of the railway cutting and not for the protection of the bridge, and the required repairs were not "necessary works" connected with the bridge or its immediate approaches since; and, therefore, the plaintiffs were not entitled to the declaration they sought. (Monmouthshire County Council *v.* British Transport Commission. Q.B.D.) 224

2. Right of way; footpaths over and under railway; possibility of dedication by statutory corporation; National Parks and Access to the Countryside Act, 1949, s. 27, s. 30.—Where the dedication to the public by a statutory corporation, e.g., a railway undertaking, of a right of way over their land is not incompatible with the statutory purposes for which the corporation acquired the land, that dedication is valid. (British Transport Commission *v.* Westmorland County Council and Worcester County Council. House of Lords) ... 394

HOUSING

1. Closing order; underground rooms; fitness for human habitation; standard to be applied; Housing Act, 1936, s. 12 (2) (*b*); Housing Repairs and Rents Act, 1954, s. 9 (1).—A local authority made a closing order relating to a basement flat on the ground that it comprised underground rooms which did not comply with regulations made by the local authority, and were, therefore, deemed to be unfit for human habitation by reason of s. 12 (2) (b) of the Housing Act, 1936. On appeal by the owner to the county court under s. 15 of the Act, the closing order was quashed on the ground that s. 9 of the Housing Repairs and Rents Act, 1954, laid down the sole test for fitness for the Housing Act, 1936, and that the council was no longer able to rely for the test of unfitness on s. 12 (2) of the Act of 1936 and the regulations made thereunder. On appeal by the council:—*Held*, the closing order was rightly quashed because s. 9 of the Act of 1954 superseded s. 12 (2) of the Act of 1936 so as to provide in regard to underground rooms the sole standard of fitness or unfitness for human habitation, and to render no longer operative for that purpose the provisions of s. 12 (2) of the Act of 1936 or any regulations made thereunder. (Critchell *v.* Lambeth Corporation. C.A.) 374

2. House of local authority; rent; increase; "reasonable charges"; differential rent scheme; duty of local authority in fixing rents; Housing Act, 1936, s. 83 (1), s. 85 (5) (as substituted by Housing Act, 1949, s. 1, sch. I, s. 85 (6)).—In 1934 the defendant council, as housing authority, allotted the tenant a dwelling-house, consisting of four rooms, a kitchenette and a bathroom, on their, then recently built, W. housing estate, at a rent of 13*s.* a week which included 3*s.* for rates. By 1948 this rent had been raised to £1 2*s.* a week including 7*s.* 3*d.* for rates. From 1934 to 1955 the council suffered an average annual loss on the estate of £1,773. The loss reached the peak figure of £12,196 in 1949 and stood at £6,625 in 1955, although the liability for internal repairs had been transferred to the tenants in 1951. Since 1951 the council had operated a differential rent scheme which applied only to new tenancies, but in 1954 it was decided to apply the scheme also to the old tenancies.

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Under the scheme a maximum rent was fixed according to the type of house, and rebates were granted to tenants unable to afford it. The plaintiff, a tenant of the council, did not qualify for any rebate, and so his rent was liable to be raised to the maximum rent of £2 a week by instalments, the full figure becoming payable from November, 1956. The tenant claimed a declaration that the new rent was unreasonable, and contended, in particular, that the rent charged was more than the economic rent of his house, i.e., the rent at which a house must be let in order to cover loan interest and sinking fund contribution and cost of maintenance and repair. The maximum rent as fixed by the council was related to the economic rent, not by taking any house or estate separately, but by grouping all their housing estates and then ascertaining the economic rent chargeable for houses in that group. Exchequer subsidies being pooled for the purpose of the calculation. The economic rent for a house such as that of the tenant on the W. estate was shown to be £1 9*s.* 6*d.* a week, while that for a smaller house on another estate built at a later date and more expensively, amounted to £1 19*s.* 6*d.* a week. On this basis, the council considered it fair to charge £2 a week as a maximum rent for four-roomed houses in the whole group:—*Held*, as there was no reason why a local authority might not spread its costs over all its properties to an extent which was not unreasonable from a market point of view, and as there was no duty on local authorities to limit the rent which they charged by reference to the prime cost of the houses when built, the rent was reasonable, and, being a reasonable charge which, by s. 83 (1) of the Housing Act, 1936, the council was entitled to make for the tenancy of the house, it was validly charged. (Summerfield *v.* Hampstead Borough Council. Ch.D.) 72

HUSBAND AND WIFE

1. Appeal to Divisional Court; infant respondent; service on infant instead of on guardian *ad litem;* Matrimonial Causes Rules, 1950, r. 64 (3).—By Matrimonial Causes Rules, 1950, r. 64 (3): "Where in any cause to which these rules apply any document is required to be served and the person on whom service is to be effected is an infant, the document shall, unless otherwise directed, be served on the father or guardian of the infant . . . and service so effected shall be deemed good service on the infant." The husband and the wife were infants. The wife, by her next friend, served on the husband notice of motion of appeal to the Divisional Court against an order of a magistrate's court. The husband's father applied for a civil aid certificate for the purpose of opposing the appeal and the certificate was granted to the husband "to defend (through his father and next friend) an appeal to the Divisional Court." On the question whether the notice of motion had been properly served:—*Held*, r. 64 was mandatory, and applied to appeals to the Divisional Court from magistrates' courts, but in the circumstances of the case the service on the husband would be deemed to have been good service. (Levy (by her next friend) v. Levy. P.D. & A.) 128

2. Cruelty; desertion; course of conduct amounting to cruelty causing spouse to leave matrimonial home.—The parties were married in 1951. The wife left the husband in September, 1956, and later caused a summons to be issued against him alleging, among other things, that he had been guilty of persistent cruelty to her and had deserted her.

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The justices accepted the wife's evidence, found the complaints of persistent cruelty and desertion proved, and made a separation order in the wife's favour. On appeal by the husband it was contended (i) that the husband's conduct could not in law amount to cruelty as there was no intention to injure the wife, and (ii) that the particulars of alleged cruelty were really particulars of desertion and that desertion could not be an ingredient of cruelty:—*Held*, the justices were entitled to find the charges proved since (i) the husband had, knowing the wife's condition, persisted in a course of conduct in spite of her objection to it and indifferent as to its effect on her, and (ii) the particulars and evidence of cruelty could be adduced by the wife in support of her charge of constructive desertion. *Per* LORD MERRIMAN, P.: I do not accept the view that desertion cannot be cruelty. In my opinion, it does not in the least follow from the fact that, in contrast with cruelty, the remedy of divorce is only given for desertion which has lasted for three years before the presentation of the position, that desertion *per se* cannot be cruelty. *Per* COLLINGWOOD, J.: it is impossible to draw the line between conduct which constitutes expulsive conduct in a charge of constructive desertion and conduct which constitutes an ingredient in a charge of cruelty. (Cade v. Cade. P.D. & A.) 200

3. Desertion; misconduct conducing; misconduct not amounting to just cause; Matrimonial Causes Act, 1950, s. 4 (2), proviso (iv).—The parties were married on August 25, 1943, and there were no children of the marriage. At the time of the marriage the husband was serving in the Royal Air Force, and the wife was living with her mother at Leicester where the parties cohabited when the husband was on leave. The husband was demobilised in 1946 and the parties continued to live at the wife's mother's house in Leicester. The husband returned to his pre-war job with a bank in Leicester; the wife had a business of her own in Leicester. In October, 1952, the husband was posted to London and on November 8, 1952, he left Leicester. The wife refused to accompany him to London. The husband spent Christmas, 1952, with the wife at Leicester, staying with her until December 29, 1952. He then returned to London and wrote several letters to the wife asking her to come to London to help him look for a house, but she refused to do so. In September, 1953, the husband acquired a bungalow in a London suburb, but the wife refused to join him there. On November 22, 1953, the husband wrote specifically inviting the wife to come to the bungalow and settle there as their home. The wife replied on November 30, 1953, in terms amounting to a final refusal to live with the husband. On January 2, 1956, the husband filed the present petition for divorce. By her answer the wife asked that the petition be dismissed and did not herself pray for relief:—*Held*, (i) the wife had no just cause for absenting herself from her husband. To constitute just cause for one spouse living apart from the other spouse there must be a grave and weighty matter, i.e., conduct of such kind as, in effect, made the continuance of married life together impossible. Nothing that had been alleged by the wife went anything like that distance. The things of which she complained in her husband have caused unhappiness in the home, and made him difficult to live with, but they fell short of anything which could amount to just cause within the interpretation which had to be put upon that phrase; (ii) on the question whether the husband had been guilty of "such wilful

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neglect or misconduct as had conduced to the desertion" within s. 4 (2), proviso (iv), of the Matrimonial Causes Act, 1950, the only meaning which could be attributed to proviso (iv) was that it referred to conduct which was not sufficiently bad to constitute just cause for the other spouse leaving the matrimonial home, but was something worse than the ordinary wear and tear of married life, which either spouse must be prepared to accept when he or she took the other for better, for worse—in other words, one must see if there had been conduct which fell short of justifying the separation, but which might, in part at least, excuse it; (iii) on the evidence, the wife was in desertion and the husband was not guilty of conduct conducing thereto. (Postlethwaite *v.* Postlethwaite. P.D. & A.) ... 265

4. Domestic proceedings; probation officer; husband's statement to probation officer; probation officer authorized to ask for adjournment on husband's behalf, but not to make admission of desertion.—The wife caused a summons to be issued against the husband on her complaint that he had deserted her. The husband attended court on the date of the hearing. He saw a probation officer, admitted to him that he had left the wife, and explained that he had an urgent job which required him to drive to a neighbouring town and could not wait for the case to be called on. He thereupon left the court building. The case was called on and the wife gave evidence. The probation officer then gave evidence to the effect that the husband could not appear that morning, but that he admitted the desertion and was prepared to pay £3 a week. The justices found the complaint proved and made an order for maintenance in the wife's favour. The husband appealed and in support of his appeal filed an affidavit in which he denied that he had admitted to the probation officer that he had deserted the wife and set out facts which showed that there might be an answer to the charge of desertion:—*Held*, the probation officer was authorized to ask for an adjournment, but had exceeded his authority in considering himself an agent to make vital admissions on the merits of the case, and, therefore, the case would be remitted for a re-hearing. (Smith v. Smith. P.D. & A.)... 391

5. Maintenance; agreement; enforceability; wife in desertion; agreement by her to maintain herself and to indemnify husband against debts incurred by her.—By an agreement for separation it was provided that " the wife [who had deserted the husband] will out of the weekly sum or otherwise support and maintain herself and will indemnify the husband against all debts to be incurred by her and will not in any way at any time hereafter pledge the husband's credit." On a claim by the wife for arrears of maintenance the husband contended that there was no consideration for his promise to pay, and that, therefore, the agreement was not enforceable against him:—*Held*, although the wife was in desertion at the time of the agreement she might offer at any time to return to the husband; her right to maintenance was, accordingly, suspended and not forfeited by the desertion; her undertaking to maintain herself and indemnify the husband against debts was good consideration for his promise to pay her maintenance; and, therefore, the agreement was enforceable by the wife. (Williams v. Williams. C.A.) 93

6. Maintenance; ante-dating of order; refusal by justices to make order; successful appeal by wife; direction to justices to assess maintenance; order to be ante-dated to date of Divisional Court's direction.—On

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May 18, 1956, the wife made complaints to justices that her husband had deserted her and had been guilty of wilful neglect to provide reasonable maintenance for her. On July 23, 1956, the case was heard by the justices, who dismissed the complaints. The wife appealed to the Divisional Court, and on October 18, 1956, that court allowed her appeal, found her case proved, and directed the justices to assess the proper amount of maintenance. On April 18, 1957, the justices assessed the maintenance at £5 a week, but refused to ante-date the order:—*Held*, the justices had power to ante-date the order, and in the circumstances of the present case it should be made to operate from October 18, 1956, the date when the Divisional Court directed the justices to assess the amount of maintenance. (Meyer *v.* Meyer. P.D. & A.)... 424

7. Maintenance; concurrent jurisdiction; refusal by justices to make order; appeal to Divisional Court; Summary Jurisdiction (Married Women) Act, 1895, s. 10, s. 11.—By s. 10 of the Summary Jurisdiction (Married Women) Act, 1895, justices may refuse to make an order where " the matters in question between the parties or any of them would be more conveniently dealt with by the High Court " and in such a case there is no right of appeal against their decision. The wife complained to the justices that the husband had deserted her three months before the date of the complaint, that he had been guilty of persistent cruelty towards her, and that he had wilfully neglected to provide reasonable maintenance for her and the child. The justices, however, refused to make an order, holding, under s. 10 of the Act of 1895, that the matters in question would be more conveniently dealt with by the High Court. The justices particularly had in mind the fact that, if they found any complaint proved, their powers respecting an order for custody of the child were limited compared with the powers of the High Court. The wife appealed. The husband contended that by virtue of s. 10 of the Act of 1895 the wife had no right to appeal against the justices' refusal to make an order:—*Held*, the wife had a right of appeal to the Divisional Court by virtue of s. 11 of the Act of 1895 since (i) the separation having lasted only three months, the question of desertion could not be the subject of a substantive charge in the High Court; (ii) on the facts the question of desertion was integrally bound up with the charges of cruelty and wilful neglect to maintain; and, accordingly, (iii) s. 10 did not apply since there was no concurrent jurisdiction between the High Court and the magistrates' court in respect of the wife's complaints.—*Per Curiam*: Where in cases under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, the justices cannot make an order for custody, e.g., in favour of the husband or restraining the wife from taking the child out of the jurisdiction, they can refuse to make any order for custody and leave one or other of the parties to apply for an order for custody, e.g., under the Guardianship of Infants Acts, 1895 to 1949. (Davies *v.* Davies. P.D. & A.) 369

8. Maintenance; consensual separation; no agreement as to maintenance; no change of circumstances after separation; Summary Jurisdiction (Married Women) Act, 1895, s. 4.—The parties were married in 1952 and separated by mutual consent in 1956. At that time there was no agreement, express or implied, on the part of the husband to maintain the wife. On a complaint by the wife that the husband had

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been guilty of wilful neglect to provide her with reasonable maintenance:—*Held*, the wife had not proved any agreement by the husband, express or implied, to maintain her while she lived apart from him, nor was there any evidence of any change, subsequent to the separation, in her circumstances, and, therefore, she was not entitled to maintenance. (Pinnick *v.* Pinnick. P.D. & A.) 256

9. Maintenance; death of divorced husband; payment of maintenance out of his estate.—On the divorce of the parties an order for maintenance was made whereby the husband was ordered to pay to the wife "until further order until . . . the children issue of the marriage . . . shall respectively attain the age of twenty-one years . . . maintenance for the said children at the rate of £300 per annum less tax for each child, the said sums to be payable monthly." The husband paid regularly under the order until his death in June, 1955. The wife then sought to make his executrix continue the payments for the children:—*Held*, on the true construction of the order the obligation imposed on the husband to make the payments did not extend beyond his lifetime, and, therefore, his estate was not liable to pay the maintenance until the children were aged twenty-one. (Sugden *v.* Sugden. C.A.) 121

10. Maintenance; discharge of order; decree of divorce granted to husband by foreign court of competent jurisdiction; wife ignorant of proceedings until after decree; no evidence of law of foreign country as to wife's rights; Summary Jurisdiction (Married Women) Act, 1895, s. 7.—The parties were married in 1945, the husband being of English nationality and domicil. On February 7, 1950, the wife obtained under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, a maintenance order on the ground of the husband's desertion. In March, 1954, the husband went to live permanently in Las Vegas and acquired a domicil of choice in the state of Nevada. In September, 1954, the court in Las Vegas granted him a decree of divorce on the ground that he and the wife had not lived together for three years. She had no notice of the proceedings in that court as service was effected by advertisement in a Las Vegas newspaper. The husband then applied to the magistrate's court under s. 7 of the Act of 1895, for the discharge of the maintenance order of February 7, 1950. There was no evidence before the magistrate as to the law of Nevada regarding the rights of a wife to maintenance or alimony, and he, holding that the power to discharge a maintenance order was discretionary, in the exercise of that discretion dismissed the husband's application:—*Held*, where a wife is divorced by a foreign court of competent jurisdiction a magistrate's order for her maintenance must be discharged if she has been found not to be entitled to maintenance in that foreign court; if it is evident that her rights in the foreign court differ from those in this country, the proper course is to discharge the order and leave her to have recourse to whatever rights she may have in the foreign country; this last result should follow also where there is no evidence as to the wife's rights in the foreign court; the fact that the wife knew nothing of the proceedings did not render those principles inapplicable; and, therefore, the magistrate's order would be discharged. (Wood *v.* Wood. P.D. & A.) 18

11. Maintenance order; discharge or variation; decree of divorce granted to husband by foreign court of competent jurisdiction; no evidence

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of law of foreign country as to wife's right to maintenance; discretion; Summary Jurisdiction (Married Women), Act, 1895, s. 7.—The parties were married in 1945, the husband being of English nationality and domicil. On February 7, 1950, the wife obtained under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, a maintenance order on the ground of the husband's desertion. In March, 1954, the husband went to live permanently in Las Vegas and acquired a domicil of choice in the state of Nevada. In September, 1954, the court in Las Vegas granted him a decree of divorce on the ground that he and the wife had not lived together for three years. The wife had no notice of the proceedings, which were *ex parte*. The husband applied to the magistrate's court under s. 7 of the Act of 1895 for the discharge of the maintenance order of February 7, 1950, and the wife asked for an increase of the payments to be made under that order on the ground of changed circumstances. The magistrate held that the power to discharge a maintenance order was discretionary, and, in the exercise of that discretion, he dismissed the husband's application and increased the payments to be made by the husband to the maximum amount. The Divisional Court discharged that order. On appeal:—*Held*, the magistrate had jurisdiction to vary the order in favour of the wife because a decree of dissolution of the marriage, whether of an English or a foreign court, did not deprive the magistrate's court of its jurisdiction to make an order under s. 7 of the Act of 1895. Decision of Divisional Court (1956) 121 J.P. 18 reversed. (Wood *v.* Wood. C.A.) 302

J

JUSTICES.

1. Costs; motion for *mandamus* opposed; appearance by counsel; filing of affidavits in lieu of entering appearance; Review of Justices' Decisions Act, 1872, s. 2.—Observations on justices being made liable for costs, where they have appeared by counsel to oppose an application for *mandamus* instead of filing affidavits in lieu of entering appearance as provided by s. 2 of the Review of Justices' Decisions Act, 1872. (R. *v.* Llanidloes Licensing Justices. *Ex parte* Davies. Q.B.D.) 454

2. Jurisdiction; remand in custody for medical examination; offence not punishable with imprisonment; Magistrates' Courts Act, 1952, s. 14 (3).—The defendant, a metropolitan magistrate, convicted the plaintiff of offences relating to the obstruction of the highway, none of which was punishable by imprisonment, and he then remanded him in custody for one week for a medical report as to his mental and physical condition. On a claim by the plaintiff for damages for false imprisonment in respect of this remand:—*Held*, the defendant had power to adjourn the case under s. 14 (3) of the Magistrates' Courts Act, 1952, to enable inquiries (including a medical examination) to be made or to determine the most suitable method of dealing with the case, and, when so doing, to remand the plaintiff in custody or on bail under s. 14 (4) and s. 105 (1) of the Act, and, therefore, the plaintiff was not entitled to succeed. Decision of PILCHER, J. (1956) 120 J.P. 414, affirmed. (Boaks *v.* Reece. C.A.) 51

3. Right to trial by jury; election to be tried summarily and plea of Not Guilty; proceedings adjourned; no evidence heard; request for leave to withdraw election; consent of magistrate; Magistrates'

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Courts Act, 1952, s. 19 (4), (5), s. 24.—The defendant, who was over 17 years of age, was charged at a metropolitan magistrate's court with receiving stolen goods—an indictable offence triable summarily with the consent of the accused by virtue of s. 19 of the Magistrates' Courts Act, 1952. The defendant consented to be tried summarily and pleaded Not Guilty and the trial was then adjourned. At the adjourned hearing the defendant, who was then legally represented, before any evidence was called, expressed a desire to withdraw his consent to summary trial and to elect to be tried by a jury. The magistrate granted the application. On an application by the prosecution for *mandamus* directing the magistrate to try the defendant summarily:—*Held*, that the magistrate's decision to allow the defendant to withdraw his consent to summary trial was right because (*per* LORD GODDARD, C.J., and BYRNE, J.) the trial had not "begun" within the meaning of s. 24 of the Act of 1952 merely because the accused's election had been made and his plea had been taken, and the section would not apply except where a magistrate had begun to try the case in the sense of taking evidence, and (*per* DEVLIN, J.), in any event, there was nothing in s. 19 (5) which prevented the magistrate, if he ascertained that the accused wanted to change his election, and it appeared to be in the interests of justice, from allowing him to do so. (R. *v.* Craske. *Ex parte* Metropolitan Police Commissioner. Q.B.D.) 502

JUVENILE COURTS.

Order committing child to care of local authority as fit person; supervision order in force; consent of local authority not obtained; no reference to such consent on face of order; Children Act, 1948, s. 5 (1).—A juvenile court made an order committing a child, in respect of whom a supervision order was in force at the time, to the care of a local authority as a fit person. The court made the order in the belief that the consent of the local authority had been obtained, though, in fact, it had not. The order showed on its face that the supervision order had been made, but did not recite that the consent of the local authority had been obtained. On motion for *certiorari* to quash the order on the ground that the consent of the local authority had not been obtained:—*Held*, that by reason of the provisions of s. 5 (1) of the Children Act, 1948, the court had no jurisdiction to make the order without the consent of the local authority, and, therefore, the order was bad on its face and must be quashed. *Per Curiam*: An order of this kind should recite that the consent of the local authority has been obtained, and should set out on its face sufficient to show that the court had jurisdiction to make it. (R. *v.* Darlington Juvenile Court. *Ex parte* West Hartlepool Corporation. Q.B.D.) 147

L

LAND DRAINAGE.

Dredging river; dredgings deposited on adjoining land; "without making payment therefor, or giving compensation in respect thereof . . . may deposit any matter so removed on the banks of the watercourse" or "use it in any other manner for the maintenance or improvement of those banks"; construction; Land Drainage Act, 1930, s. 38 (1), s. 81.—A landowner claimed compensation from the Mersey River Board in respect of matter dredged by the board from

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a river adjoining his land, and then deposited on his land by the board. The board denied liability and relied on the exclusion of compensation contained in s. 38 (1) of the Land Drainage Act, 1930, which provides: "A drainage board, without making payment *therefor* or giving compensation in respect *thereof*, may appropriate and dispose of any shingle, sand, clay, gravel, stone, rock or other matter removed in the course of the execution of any work for widening, deepening or dredging any watercourse, and may deposit any matter so removed on the *banks* of the watercourse or use it in any *other* manner for the maintenance or improvement of those *banks* or for the purposes of the execution of any other work which the drainage board have power to execute." On appeals against the decision of the Lands Tribunal on certain preliminary points of law as to the construction of s. 38 (1):—*Held*, the effect of the words of s. 38 (1) which are printed in italics above was as follows: (i) "therefor" and "thereof" referred only to the "matter removed in the course of the execution of" the work referred to in the sub-section, and, therefore, the subsection only excluded a claim to compensation in respect of the taking of such matter, and did not exclude any right to compensation which might arise from the deposit or use of the matter so taken; (ii) "banks" meant so much of the land adjoining or near to a river as performed or contributed to the performance of the function of containing the river; (iii) "other" limited the permitted deposit on the banks to a deposit which in fact contributed to the maintenance or improvement of those banks. (Jones *v.* Mersey River Board. C.A.) 581

LANDLORD AND TENANT.

Metropolis; land; notice to terminate business tenancy on behalf of London county council; "signature"; need of personal signature by landlord; signature of official authorized by council in writing; signature of authorized official written "per procurationem" by another official not so authorized; London Government Act, 1939, s. 184 (1); Landlord and Tenant Act, 1954, s. 25 (1); Landlord and Tenant (Notices) Regulations, 1954 (S.I. 1954, No. 1107), reg. 4, Appendix, Form 7.—The London county council gave T a notice dated January 4, 1956, under s. 25 (1) of the Landlord and Tenant Act, 1954, to terminate his tenancy of certain business premises of which the council were landlords. The form of notice under s. 25 (1), which is prescribed by reg. 4 and appendix, form 7, of the Landlord and Tenant (Notices) Regulations, 1954, has at its foot "Signed . . . (Landlord)." The council's valuer, J. E. J. Toole, who was authorized in writing to sign such notices by the council's standing orders, authorized R. H. D., one of his assistants, to sign these notices for him. The notice in this case was signed by R. H. D. writing in the appropriate space "J. E. J. Toole, pp. R. H. D." On May 4, 1956, T applied by originating summons for a new tenancy under the Act of 1954, and on September 20, 1956, an affidavit by the valuer revealed the above facts. On November 9, 1956, in his affidavit in reply to this affidavit, T claimed that, as R. H. D. did not have the written authority of the council to sign notices, the notice under s. 25 (1) was invalidated by s. 184 (1) of the London Government Act, 1939, which provides: "Any notice . . . which a local authority is authorized or required by or under any enactment . . . to give . . . may be signed on behalf of the authority by the clerk of the authority or by any other officer of the authority authorized by the authority in writing to sign documents of the particular kind . . ." On December 20, 1956,

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T issued a writ claiming a declaration that the notice under s. 25 (1) of the Act of 1954 was invalid and had not terminated his tenancy, because it was not signed by a properly authorized person:—*Held*, the notice was valid and effectively terminated the tenancy because: (i) the space in the prescribed form followed by the word "landlord" did not so require the personal signature of the landlord as to exclude the common law rule that a signature by an authorized agent is a good signature by the principal (R. *v.* The Kent Justices (1873) 37 J.P. 308; and Re Whitley Partners, Ltd. (1886) 32 Ch.D. 337 applied; Re Prince Blucher [1931] 2 Ch. 70, distinguished); (ii) the writing by R. H. D. was a good signature by J. E. J. Toole, the authorized agent of the council (London County Council *v.* Agricultural Food Products [1955] 2 All E.R. 229, followed); (iii) s. 184 (1) was permissive, not imperative, and did not prevent the council from signing documents in ways other than those for which it provided. *Per Curiam*: It is most desirable in cases under the Landlord and Tenant Act, 1954, where time may be an important consideration, that parties who wish to take objection to the form or the validity of the proceedings should act promptly and not reserve objections of the kind raised here until the proceedings have been on foot for, perhaps, months. If necessary, the Court would have been prepared to hold that the tenant in this case had waived any objection to the notice. Principle stated by HENN-COLLINS, J., in Davis *v.* Huntley [1947] 1 All E.R. 246, 248, approved. (Tennant *v.* London County Council. C.A.) ... 428

LANDS TRIBUNAL.

Costs; discretion; judicial exercise; determination of development value by Central Land Board; appeal to Lands Tribunal; successful party overstating case.—The appellant was the owner of land near Tattenham Corner, Surrey, which he intended to develop as a garden city. Plans were prepared by one Z and planning consent was granted in October, 1938, but, owing to the outbreak of the war, the land could not be developed. The appellant applied to the Central Land Board for the ascertainment of the development value under s. 58 of the Town and Country Planning Act, 1947. He claimed that the development value was £217,000 odd, basing his calculation on the Z plan. The Central Land Board determined the value at £44,500 on the ground that the Z plan was irrelevant and that the value should be arrived at by taking a figure based on length of frontage on the roads. The appellant appealed to the Lands Tribunal which held that the method adopted by the appellant was the right one, and determined the value, after making adjustments at £102,500. The hearing before the tribunal lasted five days and the hearing fees amounted to £500. The tribunal made no order as to costs on the ground that both parties had based their valuations on mistaken assumptions. The effect of the order was that the appellant had to pay the whole of the hearing fees. On appeal on the question of costs:—*Held*, the tribunal had failed to exercise its discretion as to costs judicially (i) because it disregarded that the proceedings were in the nature of an appeal from the decision of the Central Land Board, (ii) that on the vital question which principle should be applied the appellant had succeeded, and was, therefore, entitled to his costs except in so far as they had been increased by his mistake. The proper order (made with the consent of the parties) was that the Central Land Board should pay half of the hearing fees and half of the appellant's costs before the tribunal. (Wootton *v.* Central Land Board. C.A.) ... 137

LICENSING. PAGE

Ordinary removal; confirmation; death of applicant after grant of removal, but before confirmation; application by executrix for confirmation; Licensing Act, 1953, s. 22, s. 25.—Justices having granted an ordinary removal of an off-licence, the licensee died before the next meeting of the confirming authority. At the meeting the executrix of the licensee applied for confirmation of the removal, but the authority held that they had no jurisdiction to deal with the application in view of the licensee's death, and they declined to adjudicate. At the time of the meeting the next transfer sessions after the licensee's death had not taken place. The executrix applied for an order of *mandamus* directing the confirmation authority to consider her application:—*Held*, that, the licence being still in existence and an order having been made by the licensing justices that it should be removed, the confirming authority had jurisdiction to consider the application for confirmation made by the executrix, the position being different from that which arose where a new licence had been granted and the applicant died before confirmation, because in that case the licence had never come into existence. An order for *mandamus* must, therefore, issue. (R. *v.* Derby Borough Confirming Authority. *Ex parte* Blackshaw. Q.B.D.) 522

LOCAL GOVERNMENT.

1. Alteration of area; extension of county borough boundaries to include part of administrative county area; financial adjustments; claims presented by county council against corporation of borough more than six years after alteration of areas; limitation of time; date from which time runs; Local Government Act, 1933, s. 151 (1), (3); Limitation Act, 1939, s. 2 (1) (*d*).—In 1937 and 1938, under orders made by the Minister of Health in pursuance of powers given to him by the Local Government Act, 1929, s. 46, parts of the area of the West Riding of Yorkshire county council were transferred to and incorporated into the borough of Huddersfield. In January, 1953, the county council claimed from the Huddersfield corporation £214,516 and £44,273, in respect of the two orders by way of financial adjustment under the Local Government Act, 1933, s. 151 (1). No agreement was reached under that sub-section, and, pursuant to s. 151 (3), the claim was referred to arbitration. The corporation contended that the claim was barred under the Limitation Act, 1939, because it did not arise in whole or in part within a period of six years before the arbitration or before the claim was made:—*Held*, the claim was a claim to recover a sum recoverable by virtue of an enactment, within s. 2 (1) (*d*) of the Limitation Act, 1939; the period of limitation began to run from the date of the transfer, i.e., in 1937 and 1938; the claim was made in 1953, more than six years thereafter; and, therefore the claim was not maintainable. (West Riding of Yorkshire County Council *v.* Huddersfield Corporation. Q.B.D.) 219

2. Contract; need to be under seal; contract for work and labour; compliance with standing orders; signature by duly appointed agent; Law of Property Act, 1925, s. 74 (2); Local Government Act, 1933, s. 266 (2).—The defendants were a local authority incorporated by Royal Charter, by the terms of which the Local Government Act, 1933, was applied to the corporation. By an agreement in writing, but not under seal, the plaintiffs were engaged by the corporation to demolish certain buildings belonging to the corporation. The agreement was signed by the borough engineer and surveyor on behalf of

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the corporation and was made in accordance with the standing orders of the corporation. Under the agreement the plaintiffs were to receive £39 14*s.*, and the materials obtained in the course of the demolition, which formed by far the greater part of their remuneration, were to become their property. The plaintiffs estimated their profit on the contract at about £750. In an action by the plaintiffs against the corporation for damages for breach of contract, the corporation, by their defence, alleged that the contract was not binding on them as it was not under seal. The plaintiffs contended that, by virtue of the Local Government Act, 1933, s. 266 (2), under which all contracts made by a local authority shall be made in accordance with the standing orders of the authority, the contract was valid, it having been made in accordance with the corporation's standing orders, and because, under the Law of Property Act, 1925, s. 74 (2), the corporation could appoint, and had validly appointed, their borough engineer to execute the contract on their behalf:—*Held*, the Local Government Act, 1933, s. 266 (2), did not affect the common law rule that a contract not under seal was not enforceable against a corporation; even if a corporation complied with their standing orders, the signature of their agent would not validate an agreement which was not under seal and did not fall within any of the recognised exceptions to the rule; and, therefore, the contract in question not being under the seal of the corporation, it was not enforceable against the corporation. (A. R. Wright & Son, Ltd. *v.* Romford Corporation. Q.B.D.) ... 44

3. Plan to build school; land subject to restrictive covenant; discharge of restriction; Law of Property Act, 1925, s. 84 (2).—In 1901 the tenant for life of the R. estate conveyed to the applicant, a local authority, 82 acres, part of the settled land. The authority, with the tenant for life "and others the owners for the time being of the R. estate . . . and his and their heirs and assigns", entered into, among others, covenants to keep the land for a public park or common and not to erect any building on any part thereof nor to fell any timber or timberlike trees without the consent of the owner for the time being. The R. estate ceased to exist, there was nobody entitled to enforce the covenants contained in the conveyance of 1901, and the estate was broken up, houses being built on the land in question. The authority wished to build on a small part of the land subject to the covenants a grammar school, and asked under s. 84 (2) of the Law of Property Act, 1925, for a declaration that the whole land was no longer subject to the restrictive covenants. Thirty-nine parties living in the vicinity of the proposed school were joined as respondents, but nobody entered an appearance:—*Held*, the Court had jurisdiction to make the declaration asked for because the covenants were obsolete and could not be legally enforced, and, as none of the opponents appeared, the Court would exercise its discretion and make the declaration in respect of part of the land so far as necessary. (Re Freeman-Thomas Indenture. Eastbourne Corporation *v.* Tilley and Others. Ch.D.) 189

M

MASTER AND SERVANT.

1. Duty of master; ambulance man; examination as to fitness; provision of retractable stretcher gear; instructions as to precautions to be taken.—The plaintiff was employed by the defendant corporation

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for 19 years. In 1951 he became an ambulance driver. Prior to his employment by, and unknown to, the corporation, the plaintiff suffered from a hernia, and was susceptible to a rupture if he did work which put a strain on the abdominal muscles. In February, 1956, the plaintiff, with a colleague, had to collect a patient who lived on the second floor of a house and was a bed case. A carrying sheet was used to carry the patient to the ambulance, and, in order to lift the patient into the ambulance the plaintiff had to walk backwards, step into the ambulance and support most of the weight of the patient. While so engaged he suffered a hernia. In an action for damages for personal injury it was proved that ambulance drivers had complained to the corporation that their work was awkward and heavy and had suggested that a retractable stretcher gear should be fitted to all the ambulances of the corporation. These appliances, however, could only be used after a patient had been brought to the ambulance. The ambulance men were advised by the chief ambulance officer to bring the patients to the ambulance in a carrying sheet and then use the ordinary stretcher for lifting into the ambulance. The county court Judge found that the corporation was negligent because it failed to see that the plaintiff was a fit man for the work, did not provide proper equipment, and failed to arrange a proper system of working. On appeal:—*Held*, the corporation was not negligent because it was not under a duty (i) to examine the plaintiff as to his capacity as an ambulance man, or (ii) to fit all the ambulances with retractable gear, or (iii) to lay down an exact system of working for their ambulance men, and, therefore, the plaintiff's claim failed. (Parkes *v.* Smethwick Corporation. C.A.) 415

2. Hospital; house physician obliged to reside in hostel; theft of property from bedroom; liability of management committee.—The resident house physician at a hospital was required by the terms of his employment to live at a neighbouring hostel provided by the hospital management committee who employed him, and he was also required to leave the key of his bedroom in the lock. He received an annual salary from which a sum was deducted in respect of board and lodging. On going to his bedroom at the hostel one night he found that some articles of his personal clothing had been stolen. In an action brought by him against the committee alleging that they were in breach of a duty owed to him that they, their servants, and agents would take reasonable care of his property when left in the bedroom:—*Held*, there was no duty on a master, merely because of the relationship which existed between him and his servant, to take steps to insure that no one would have an opportunity of stealing the servant's goods, and, therefore, no such obligation on the part of the committee was to be implied in the plaintiff's contract of service and he was not entitled to succeed. (Edwards *v.* West Herts. Group Hospital Management Committee. C.A.) 212

MENTAL DEFECTIVE

Application for leave to bring action against detaining authorities; "substantial ground" for contention that authority "has acted in bad faith or without reasonable care"; Lunacy Act, 1890, s. 330, as substituted by Mental Treatment Act, 1930, s. 16 (1); order for detention made by judicial authority in 1925 on petition of one parent; other parent abroad; need of other parent's consent; Mental Deficiency Act, 1913, s. 6 (3) (*a*).—In 1922, when he was 18 years old,

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R had a nervous breakdown. His parents sent him to an approved home, where he remained for twenty months in the care of Dr. C, and then to a farm, where he proved to be unmanageable. At the time his father was a police officer in India, and his mother, who was staying in lodgings in London, could find nowhere for him to stay permanently. On January 30, 1925, shortly before his twenty-first birthday, R was taken to the L. county council by his mother, his uncle, and Dr. C. Dr. C told the L. council that R was entirely beyond the control of his parents, and that two doctors were prepared to certify him as a mental defective. His mother was anxious that R should be put under immediate restraint. R was examined by the L. council medical officer, and was then taken by the L. council to a place of safety and there detained, pursuant to s. 15 of the Mental Deficiency Act, 1913, as a person whom the L. council had "reasonable cause to believe to be a defective," and had "found neglected." A few days later R's mother presented a petition to the judicial authority, supported by certificates by a specialist and Dr. C that R was a mental defective, asking that he be sent to a certified home (where she would pay for him) in the area of the M. county council. The judicial authority made the order, and R was sent from the place of safety to the certified home. In March, 1925, after R's twenty-first birthday his case was re-considered by three visitors two of whom considered him to be defective while the third considered he was not defective. R, therefore, continued to be detained. Some time later R's father died, and his mother was unable to pay for him and so began to arrange his transfer to an institution. Before the transfer had been arranged R escaped. On re-capture he was taken to an M. county council institution, where he remained for a few months, during which time he retained a solicitor, who wrote on his behalf to the M. county council. They then said they intended to present another petition to the judicial authority, but later changed their minds. Finally, in October, 1925, the Board of Control made an order that R, who had threatened violence on a number of occasions, was of dangerous propensities, and removed him to a suitable institution. In 1954 R was released. Soon afterwards he applied to the High Court pursuant to s. 330 (2) of the Lunacy Act, 1890, which requires the court to be satisfied that "there is a substantial ground for the contention that" the proposed defendants had "acted in bad faith or without reasonable care," for leave to bring actions for negligence and breach of statutory duty against the L. county council, the M. county council and the Board of Control. The M. county council then explained that they had changed their minds as to presenting a petition because they had at first thought a fresh petition was necessary to enable them to pay for R at their institution, but later found it was not. HAVERS, J., granted R leave to commence proceedings against the Board of Control, but refused him leave to commence proceedings against the county councils. On appeals by R and by the Board of Control:—*Held*, leave should not be granted for proceedings against any of the proposed defendants, because:—(i) the action of the L. county council on January 30, 1925, must be regarded in the light of the law as it was then generally understood, and not in the light of the narrow interpretation subsequently put on the words "found neglected" in R. v. Board of Control, ex parte Rutty (1956) 120 J.P. 153; the L. county council had not acted "in bad faith or without reasonable care" in 1925 because, in the circumstances, they might reasonably have considered

MENTAL DEFECTIVE—*continued* PAGE

that R was "neglected" as his parents could not give him the care and control which he needed; (ii) although the petition to the judicial authority was presented by the mother, the written consent of the father as "the parent" was not required by virtue of s. 6 (3) of the Act of 1913, because the father was unavoidably away in India and so his consent could not have been obtained within a reasonable time, and, therefore, the order of the judicial authority was good, and the Board of Control were entitled to act on it; (iii) there was a possible explanation for the conduct of the M. county council in changing their minds as to a second petition to the judicial authority, and there was no substantial ground for the contention that, in so doing, they had been guilty of bad faith; (iv) in the circumstances the Board of Control had exercised reasonable care when they removed R to another institution on the ground that he was of dangerous propensities; (v) in the circumstances no substantial ground had been shown for bringing the proposed actions. *Per curiam:* It is impossible to define what are "substantial grounds", suffice it to say that there must be solid grounds for thinking that there was want of reasonable care or bad faith. *Per* PARKER, L.J.: "substantial grounds" means something more than reasonable grounds, something short of certainty, but something considerably more than bare suspicion. (Richardson *v.* London County Council and Others. C.A.) 355

MINES.

Ventilation; one mechanical fan only in use; deliberate stoppage for purpose of servicing; necessity for alternative system; person performing duties of manager; reliance on deputy to fulfil statutory duties; liability; Coal Mines Act, 1911, s. 29 (1).—On June 26, 1955, the respondent, who was the under-manager of a colliery, was appointed to perform the duties of the manager during the manager's absence on an instructional course. On July 23 the respondent, who was still acting as manager, gave instructions for the sole mechanical fan by which the mine was ventilated to be stopped at 1 *p.m.* for maintenance. During the morning the respondent posted a notice in his office at the pit bottom that the fan would be stopped during the week-end for repair, but that notice could be seen only by the deputies and not by the workmen. The fan was re-started at 7 *p.m.* on July 24 and during the period of stoppage there was no mechanical ventilation in the colliery. Prior to that date there had been no trouble from gas in the colliery, but during the stoppage of the fan there was an accumulation of noxious gases in No. 9 district. On the morning of July 25 the respondent assigned a deputy, N, to No. 9 district and detailed six men to do work therein. The deputy failed to fulfil his statutory duty of examining the district before the workmen entered it, and two of the men were overcome by noxious gases in the district, one of whom subsequently died. The respondent was charged before justices with an offence against s. 75 of the Coal Mines Act, 1911, in that there had been a contravention of s. 29 (1) of the Act, which requires an adequate amount of ventilation to be constantly produced in the mine to dilute and render harmless noxious gases. The justices were of opinion that the respondent had taken all reasonable means to prevent the contravention of or non-compliance with s. 29 (1) within the meaning of s. 75 and dismissed the information. On appeal by the prosecutor:—*Held*, (i) that there was no provision in the Act allowing ventilation

MINES—*continued* PAGE

machinery to be stopped for maintenance or repair unless the stoppage had been caused by an accident, and that, if the ventilation was provided by mechanical means, these must be in duplicate or there must be other means of ventilating the shaft during such time as repairs were being done; (ii) the duty to provide sufficient ventilation was imposed on the manager so that he was primarily and not vicariously liable, and, if the ventilation proved insufficient, it was no defence within the exempting words of s. 75 for him to say that he had appointed some other competent person to attend to it. The case must, therefore, be remitted to the justices with a direction to convict. *Dicta* in Davies *v.* May (1937) 101 J.P. 250, applied. (McCarthy *v.* Lewis. Q.B.D.) 153

N

NATIONAL ASSISTANCE.

Illegitimate child; right of board to apply for bastardy order; proof that mother is a "single woman" not required; National Assistance Act, 1948, s. 44 (2).—On the true construction of s. 44 (2) of the National Assistance Act, 1948, the National Assistance Board are entitled to obtain an order for a summons to be served under s. 3 of the Bastardy Laws Amendment Act, 1872, on the putative father of an illegitimate child, without proving that the mother of the child is a "single woman" within the meaning of s. 3 of the Act of 1872. *Dicta* in National Assistance Board *v.* Mitchell (1955) 119 J.P. 572 disapproved. (National Assistance Board *v.* Tugby. Q.B.D.) ... 149

NATIONAL INSURANCE.

Contributions; recovery of arrears; recovery as "penalty"; default; committal to prison; maximum period permissible; National Insurance Act, 1946, s. 54 (1); Magistrates' Courts Act, 1952, sch. III (4); National Insurance (Contribution) Regulations, 1948 (S.I. 1948, No. 1417), reg. 19 (5).—The applicant was convicted under s. 2 (6) of the National Insurance Act, 1946, of failing to pay contributions due from him as a self-employed person. He was fined £4 and ordered under reg. 19 of the National Insurance (Contributions) Regulations to pay arrears amounting to £38 8*s.* 3*d.* He failed to comply with this order and a magistrates' court committed him to prison for three months. Under s. 54 (1) of the National Insurance Act, 1946, and sch. III (4) to the Magistrates' Courts Act, 1952, such a sum is enforceable as a civil debt, and the maximum period of imprisonment for default in respect of a sum "enforceable as a civil debt" is six weeks. By reg. 19 (5) of the regulations of 1948 a sum ordered to be paid under reg. 19 for arrears of contributions is "recoverable as a penalty". On motion by the applicant for *certiorari* to quash the committal order on the ground that the arrears were a sum "enforceable as a civil debt" and that the period of imprisonment was limited to six weeks:—*Held*, that, once the sum had been ordered to be paid under reg. 19 (5), it became recoverable as a penalty and ceased to be "enforceable as a civil debt" within the meaning of sch. III (4) to the Act of 1952, and as, under para. 1 of that schedule, committal to prison for three months was permitted in the case of default in payment of an amount exceeding £20 which was not enforceable as a civil debt, the committal order was valid and *certiorari* must be refused. (R. *v.* Marlow (Bucks.) Justices. *Ex parte* Schiller. Q.B.D.) 519

NUISANCE. PAGE

Public nuisance; class of public; damage to individuals; partial abatement before trial; dilatoriness in abatement; validity of injunction. —The defendants so conducted their quarrying operations that adjoining householders were discomfited by noise and vibration and their houses and gardens were frequently covered in dust. After the issue of the writ the defendants much reduced these causes of complaint, but they had not entirely removed them by the date of the trial. On their application the district registrar had struck out of the statement of claim allegations of damage to individuals and their land, but evidence of this damage had been received at the trial, and an injunction granted. The defendants appealed against that part of the injunction which restrained them "from carrying on the business of quarrying . . . in such a manner as . . . to occasion a nuisance to Her Majesty's subjects by dust or by vibration", contending, *inter alia*, (i) that the nuisance, if any, caused by vibration was insufficiently widespread to constitute a public nuisance, (ii) that, in view of their substantial remedying of the causes of complaint since the issue of the writ, the injunction should not have been granted:—*Held*, the appeal should be dismissed as (i) at the date of the issue of the writ a sufficient number of the persons in the neighbourhood to constitute a class of the public were affected by the vibration, which was, therefore, a public nuisance; (ii) the existence of the nuisances at the date of issue of the writ *prima facie* entitled the plaintiff to an injunction, and, although an injunction would not normally be granted where the nuisance had been abated before the trial, an injunction should be granted because the nuisances had not been wholly abated at the date of the trial and were not inevitable; (iii) the trial Judge, in deciding whether to grant an injunction, was entitled to take into consideration the scant attention paid by the defendants to complaints before the issue of the writ, and their dilatoriness in taking steps to abate the nuisances; (iv) the allegations of damage to individuals and their land had been properly pleaded, and the evidence thereof rightly received at the trial. (Attorney-General (on the relation of Glamorgan County Council and Pontardawe Rural District Council) *v.* P.Y.A. Quarries, Ltd. C.A.) 323

P

POLICE

Injury to police officer on duty through negligence of third party; officer's wages during incapacity paid by authority; right of authority to recover from third party; Local Government Act, 1888, s. 30 (3).—Two police constables were injured while on duty by negligent drivers of motor vehicles. During the period of their incapacity they were paid by the police authority the full wages and allowances due to them by virtue of statutory provisions. In proceedings taken by them they recovered damages which did not include loss of wages or other emoluments. The receiver of the Metropolitan Police and the Monmouthshire county council, who paid the wages and other emoluments to the police constables during their incapacity, claimed from the drivers of the vehicles in question the sums paid by them respectively to the constables on the ground that the drivers had been unjustly enriched by those payments because, but for those payments, the amount of special damage for which they were liable would have been increased by those amounts:—*Held*, the police authorities

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suffered no financial loss through the negligence of the defendants because they had to pay the wages and other emoluments to the police officers so long as they were members of the forces and the only loss they suffered was the loss of the services of the constables for which no action lay, the police constables being the servants of the Crown and not of the police authority; the defendants had not been enriched by the payments made by the police authorities as they had paid all the damages the injured police constables had sustained through their negligence; and, therefore, the actions by the authorities failed. (Metropolitan Police District Receiver *v.* Croydon Corporation and Another; Monmouthshire County Council v. Smith. C.A.) 63

Q

QUARTER SESSIONS

Appeal to; unequivocal plea of Guilty at magistrate's court; no right of appeal against conviction; Metropolitan Police Courts Act, 1839, s. 50.—The defendant pleaded Guilty at a metropolitan magistrate's court to keeping a brothel and to permitting children to be kept there. She was fined £100 and sentenced to six months' imprisonment. She sought to appeal to quarter sessions against her conviction, but quarter sessions, having decided that she unequivocally pleaded Guilty at the magistrate's court, held that she had no right of appeal against conviction under s. 50 of the Metropolitan Police Courts Act, 1839. On motion for *mandamus* directing quarter sessions to hear the appeal against conviction:—*Held*, that a person who had deliberately pleaded Guilty in a magistrate's court could not be a person "aggrieved" within the meaning of s. 50 so far as conviction was concerned, and, accordingly, he had no right of appeal against conviction under s. 50, although a right of appeal against sentence was given by that section. *Mandamus*, therefore, would not issue. Mittlemann *v.* Denman (1920) 84 J.P. 39 explained. (R. *v.* Deputy-Chairman of the County of London Quarter Sessions Appeal Committee. *Ex parte* Borg. Q.B.D.) 562

R

RATING AND VALUATION

1. Assessment on profits basis; water undertaking; gross receipts from precepts on constituent authorities.—A water board estimated that expenditure for the year ended March 31, 1952, would exceed revenue by £66,170, there being included in the estimates of expenditure £9,515, which it was anticipated would be required for loan charges in respect of capital expenditure on works not yet in beneficial occupation. Precepts were issued to the constituent authorities of the board for a total amount of £66,170, and this sum was received from them during the year. In fact, the amount required for loan charges was only £3,365. On the question whether, in arriving at the cumulo net annual value of the board for rating purposes on the basis of the accounts for that year, the receipts under precept, including the £3,365 actually spent on loan charges, should be treated as part of the profits of the board:—*Held*, the whole amount received in respect of the carrying on of the undertaking was to be regarded as receipts of the board as hypothetical tenants and the proportion of that amount calculated to belong to the hypothetical landlord was

RATING AND VALUATION—*continued* PAGE

to be treated as rent out of which the landlord had to pay the loan charges in respect of both completed and uncompleted works. Decision of the Court of Appeal, *sub nom.* Lee (Valuation Officer) *v.* Mid-Northamptonshire Water Board (1956) 120 J.P. 283, affirmed. (Mid-Northamptonshire Water Board *v.* Lee (Valuation Officer) House of Lords) 340

2. Charitable organization; organization concerned with advancement of religion, education or social welfare; Theosophical Society; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The Theosophical Society in England was a component national society of an international society and was not established or conducted for profit. One of its main objects was "to form a nucleus of the universal brotherhood of humanity without distinction of race, creed, sex, caste or colour." The explanation of this object, which the court accepted, was "to form an ever expanding group of persons who are aware of the universal brotherhood of man which is implied by the Fatherhood of God and who believe in working for the diminution and final abolition of all intolerance and discrimination relating to race, creed, sex, social class and colour." On the question whether the society was an organization "the main objects of which were concerned with the advancement of religion, education or social welfare" within s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955:—*Held*, the object of the society was not solely for the advancement of religion and education and would justify activities that could not be considered within the term "social welfare" which connoted the provision of benefits or facilities tending directly to improve the health and condition of life of the class of persons concerned. (Berry *v.* Marylebone Corporation. Ch.D.) 250

3. Claim for reduction; convalescent home; organization "whose main objects are charitable or are otherwise connected with . . . social welfare"; friendly society; main object to carry on insurance business; benefits provided on actuarial basis only for subscribers paying therefor; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The appellants were a registered friendly society and as such occupied a convalescent home and premises. By their rules a member was entitled to certain benefits depending on the contributions that he had paid, being benefits of insurance determined on an actuarial basis. Among the benefits was the availability of the home without charge to members of the society whose subscriptions were not more than four months in arrear in accordance with the rules. The appellants were not established for profit, and for that reason and also on the ground that their main objects were charitable or were otherwise connected with the advancement of social welfare, within the meaning of s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, when the rating authority demanded from the appellants rates in respect of the hereditament, the appellants contended that they were not liable to pay the amount demanded. Quarter sessions dismissed an appeal by the appellants against the rate. On appeal by the appellants to the Divisional Court:—*Held*, that some eleemosynary effect was intended to be given to the words "social welfare" in s. 8 (1) (*a*); that where as in the present case, the main object of a society was to carry on insurance business and only to provide benefits to subscribers who had paid for them on an actuarial basis, it could not be said that there was any eleemosynary element in the business carried

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on; and that, therefore, quarter sessions had rightly held that the hereditament did not come within s. 8 (1) of the Act of 1955. (National Deposit Friendly Society (Trustees) *v.* Skegness Urban District Council. Q.B.D.) 157

4. Crematorium; rated as burial ground; Burial Act, 1855, s. 15; Cremation Act, 1902, s. 4.—The joint effect of the Burial Act, 1855, s. 15, and the Cremation Act, 1902, s. 4, is that land used by a local authority for the purpose of a crematorium is entitled to the benefit in respect of rates conferred on a burial ground under s. 15 of the Act of 1855. (Law (Valuation Officer) *v.* Wandsworth Borough Council; Parkin (Valuation Officer) *v.* Camberwell Borough Council. C.A.) 526

5. De-rating; retail repair shop; repair of motor cars; work done on instructions of insurers; Rating and Valuation (Apportionment) Act, 1928, s. 3 (1) (*b*) (4).—By the Rating and Valuation (Apportionment) Act, 1928, s. 3: "(1) . . . the expression industrial hereditament does not include a hereditament occupied and used as a factory or workshop if it is primarily occupied and used for the following purposes . . . (*b*) for the purposes of a retail shop; . . . (4) . . . 'Retail shop' includes any premises of a similar character where retail trade or business (including repair work) is carried on' . . ." The appellants were the occupiers of a hereditament described in the valuation list as a "service depot, offices, and premises" where service and repair work on cars manufactured by the appellants was carried out. About one-third of the work was non-retail work, one-third retail work, and one-third repair work done under instructions of insurance companies. The question whether the hereditament was liable to be rated as being used primarily for the purpose of a retail shop within the meaning of s. 3 (1) (*b*) of the Act of 1928 depended on whether the latter work was retail work, *viz.*, work done to cars brought or sent by their owners without the intervention of any middleman:—*Held*, an insurer was not so interposed between the owner of a damaged car and its repairer as to give him the position of a middleman, and, therefore, the repair work was retail repair work. (Meriden Rural District Council *v.* Standard Motor Co., Ltd.; Paver (Valuation Officer) *v.* Standard Motor Co., Ltd. C.A.) 543

6. Gas board; discount allowed by rating authority for prompt payment; refund due to gas board; "total amount of the rates as actually levied"; whether discount to be taken into consideration; Rating and Valuation (Miscellaneous Provisions) Act, 1955, sch. IV.—During the period 1952-56 the appellants, who were the rating authority for a county borough, allowed a discount of two and a half per cent. to ratepayers who paid their rates within fourteen days of demand. The refund due under the Rating and Valuation (Miscellaneous Provisions) Act, 1955, to the respondents, a gas board, was the difference between "the total amount of rates actually levied on the board and a sum calculated under para. 2 (1) of sch. IV to the Act." The appellants computed the total amount "actually levied" as the total amount less the discount of two and a half per cent., and on this basis issued a complaint in which they alleged that the respondents had not paid a sum in respect of current rates. The respondents contended that the total amount "actually levied" was the total amount of the rates before the discount was allowed and that on this basis nothing was due from them. The justices

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accepted the respondents' contention and dismissed the complaint. On appeal by the rating authority:—*Held*, that the amount "actually levied" was the amount of the rates before the discount was allowed, and the justices had, therefore, come to a correct decision. (West Hartlepool Corporation *v.* Northern Gas Board. Q.B.D.) 161

7. Industrial hereditament; whole premises used for maintenance of road vehicles; Rating and Valuation (Apportionment) Act, 1928, s. 3 (2).—By s. 3 (2) of the Rating and Valuation (Apportionment) Act, 1928: "For the purposes of this Act any place used by the occupier for the housing or maintenance of his road vehicles . . . shall, notwithstanding that it is situate within the close, curtilage or precincts forming a factory and used in connexion therewith, be deemed not to form part of the factory . . ." The ratepayer was the occupier of premises known as Aldenham Road service depôt or factory. After three and a half years' service on the road each motor omnibus belonging to the ratepayer was sent to the premises, where the body was detached and the chassis taken somewhere else for repair. The body was subjected to examination, and any part which was found faulty was repaired. It was contended on behalf of the ratepayer that the provisions of s. 3 (2) of the Act of 1928 did not apply to the hereditament in question because the whole of the premises, and not only a part of them, was used for the maintenance of road vehicles, and, in any event, the operations carried on on the premises was not maintenance work:— *Held*, (i) the ratepayer could not claim the benefit of de-rating on the ground that the whole of the hereditament was used for the maintaining of his road vehicles; (ii) the question whether the operations carried on at the premises were maintenance work was one of degree and of fact in which a tribunal of fact was supreme so long as it did not overstep the bounds of reasonableness; applying that test, it was impossible to say that the tribunal could not reasonably conclude that the operations were in truth and reality maintenance of the road vehicles of the ratepayer. (London Transport Executive *v.* Betts (Valuation Officer). C.A.) ... 530

8. Limitations of rates chargeable; organization concerned with the advancement of education; notice terminating the limitation of rates chargeable; time for service; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (3).—The borough council was the rating authority for the district. The defendants, as an organization concerned with the advancement of education, occupied hereditaments within the meaning of s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, and by s. 8 (2) (*b*) of that Act there was a limitation of the amount of rates chargeable for the first year of the new valuation list. On March 21, 1956, notices dated March 20, 1956, were served by the borough council on the defendants under s. 8 (3) of the Act informing the defendants that as from March 31, 1959, the privileges conferred on them as ratepayers by s. 8 (2) (*b*) of the Act would cease to apply to their hereditaments. The first year of the new valuation list began on April 1, 1956, and ended on March 31, 1957. On the question whether the notices were valid and effective or were ineffective as having been prematurely served on the ground that they could not be validly served until a year subsequent to the first year of the new valuation list:—*Held*, upon the true construction of s. 8 (2) and (3) no notice under s. 8 (3) of the Act could be served until after the expiration

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of the first year of the new valuation list, and, accordingly, the notices were prematurely served and were invalid. (St. Pancras Borough Council *v.* London University. Ch.D.) 422

9. Plant and machinery; oil refinery; whether in the nature of a building or structure; constituent parts of a process boiler; Rating and Valuation Act, 1925, s. 24 (1), (5); Plant and Machinery (Valuation for Rating) Order, 1927 (S.R. & O. 1927, No. 480), sch., class 4.—A hereditament consisted of part of an oil refinery wherein was carried on a continuous process in that the oil or its severed components passed through a series of pipes connecting the individual parts of the whole topping unit which consisted of a number of distinct separate items of apparatus. Apart from that unit there was a large and elaborate boiler on the hereditament. The valuation officer contended that the whole topping unit should be rated as a "still" within the meaning of class 4 in the schedule to the Plant and Machinery (Valuation for Rating) Order, 1927, and, alternatively, if the topping unit was not so rateable, that many of its component items of apparatus fell individually within the scope of class 4, being in the nature of buildings or structures, *viz.*, the apparatus called heat exchangers, condensers, coolers, the reflux and product accumulator, soda flash tower, catwalks, and pipes. The ratepayer contended that the process boiler could not be broken up for the purpose of valuation into its component parts, and made rateable under the order of 1927:—*Held*, (i) the topping unit was not rateable as a whole under class 4 since it was not a "still" which meant a vessel or retort or container which was heated; (ii) the soda flash tower was rateable as being a "tower for treatment" which was in the nature of a structure within the meaning of the order of 1927, but all the other items were not rateable under the order; (iii) although the boiler as a unit was not rateable, its items were individually rateable under the order. (B.P. Refinery (Kent), Ltd. *v.* Walker (Valuation Officer). C.A.) 231

10. Rateable occupation; refreshment pavilion in public park; let by local authority to independent contractor.—A local valuation court found that a hereditament consisting of a refreshment pavilion in a public park and let by the local authority to one D was rateable. The park was acquired in 1894 by the local authority under the provisions of the Public Health Act, 1875, on trust to permit it to be for ever used as public walks and pleasure grounds within the meaning of s. 164 of that Act. It was agreed between the parties that the park—apart from the hereditament under appeal—was not rateable within the principle of the Brockwell Park case (Lambeth Overseers *v.* London County Council (1897) 61 J.P. 580) and that the cost of maintenance of the park as a whole exceeded any income therefrom. At the pavilion no main meals were provided; D sold ices, sandwiches, cakes, and tea at a price agreed with the corporation, his only customers being people using the park. The Lands Tribunal found that the provision of a refreshment pavilion in a public park was as essential as the provision of other amenities associated with public parks, and that the amenities provided by D did not go outside the requirements of a public park. D did nothing that the corporation would not be bound to do to provide the usual amenities expected in a park of the kind in question. The tribunal allowed the appeal. On appeal by the valuation officer to the Court of Appeal:—*Held*, *prima facie* a public park used as such was to be treated as being

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in the occupation of the public and not rateable, and that exemption was not affected by the public, for reasons connected with the management of the park, being subject to exclusion from some parts of it; on the findings of fact by the tribunal the conduct of the refreshment pavilion was ancillary to the conduct of the park itself; and the mere fact that the pavilion was conducted, not by a servant or agent of the council, but by a third party (who was a licensee or a tenant) did not affect its rateability. (Sheffield Corporation *v.* Tranter (Valuation Officer). C.A.) 456

11. Relief; advancement of religion; freemasonry; hereditament mainly concerned with administrative work; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The appellants, an association of freemasons, were the occupiers of a hereditament where they carried out the administration and government of masonic activities including the administration of a benevolent fund. The appellants were not established for profit and did not conduct their activities for profit. According to the constitution of Freemasonry its main objects were to promote and advance good citizenship, honest work, morality and wisdom, brotherly love, compassion, charity to the poor, and belief in a Supreme Architect of heaven and earth. On the initiation of a mason the " volume of the Sacred Law " (in England, the Bible) was recommended to him as the standard of truth and justice and he was urged to regulate his conduct towards God, his neighbour and himself by it. A mason was not required to have any particular religious belief or mode of worship, provided that he believed in a Supreme Being and led a moral life. There was no religious instruction, no programme for the persuasion of unbelievers, no religious supervision to see that masons remained active and constant in the various religions which they might profess, no holding of religious services, and no pastoral or missionary work of any kind. The appellants appealed against a rate levied on them by the rating authority on the ground that they were an organization, not established or conducted for profit, whose main objects (though not charitable in the legal sense) were " otherwise concerned with the advancement of religion " within s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, and, accordingly, entitled to relief under s. 8 (2):—*Held*, (i) that regard must be had, not to the functions of the appellants within the organization of Freemasonry, but to the main objects of Freemasonry as a whole, and that it would be wrong to dismiss the appellants' appeal (as quarter sessions had done) simply on the ground that, the appellants' work being largely administrative in character, their main objects could not be regarded as being for the advancement of religion; but (ii) having regard to the main objects of Freemasonry as a whole, and to the absence from its constitution of any positive steps for the promotion of religion or the sustaining and increase of religious belief, it could not be said that any of its main objects was for the advancement of religion, and the appeal must be dismissed on that ground. (United Lodge of Ancient Free and Accepted Masons of England *v.* Holborn Borough Council. Q.B.D.) 595

12. Relief; " advancement of . . . social welfare "; mine workers' holiday camp; compulsory contributions levied under statute; element of benevolence; class sufficiently wide; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The appellants were the trustees of a holiday camp and ancillary premises which

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they occupied for the purpose of providing " a holiday centre and a recreation or pleasure ground for the benefit of workers in or about coal mines employed by collieries in the Derbyshire district," including the workers' dependants and guests. The camp was established under a fund raised by compulsory contributions levied under certain Acts. The appellants were responsible for maintenance and operational expenses in connexion with the camp, but received grants to cover capital expenditure from a social welfare organization set up under statute. The appellants paid less than a rack rent for the premises, but did not seek to make a profit, and did not make a loss, on their operations. The employees of collieries benefiting under the trust were all now employed by the National Coal Board. The appellants appealed against a rate levied on them by the local authority on the ground that they were an organization whose " main objects are charitable or are otherwise concerned with the advancement of . . . social welfare " within the meaning of s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, and that they were, therefore, entitled to have their rate limited to the amount levied in the previous year under s. 8 (2):—*Held*, that the words " social welfare " in s. 8 (1) clearly extended the scope of the section beyond charities in the legal sense of the term; the material words of the section might properly be construed as " or are otherwise benevolently concerned with the advancement of social welfare"; if " benevolently " were used in contrast to " as a matter of business," there was benevolence in the present case, as the beneficiaries did not provide the funds which established the camp themselves and enjoyed the benefits provided, and the appellants paid a rent which was far below the rack rent; the coalminers of Derbyshire, their dependents and relatives, constituted a sufficiently large and important section of the community for the purposes of s. 8 (1); and, therefore, the appellants were an organization whose main objects were concerned with the advancement of social welfare within the meaning of s. 8 (1). *Per curiam:* a holiday camp where people can get holidays at cost would not of itself be a charity, not being in any way for the relief of poverty or for the advancement of education, religion or some other purpose beneficial to the community. (Derbyshire Miners' Welfare Committee v. Skegness U.D.C. Q.B.D.) ... 385

13. Relief; convalescent home of friendly society; non-profit-making organization; " main objects charitable or . . . otherwise concerned with advancement of social welfare "; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The ratepayers were a registered friendly society which conducted a mutual insurance business with its members and in carrying out that activity they accumulated considerable reserves, and from time to time made profits. The ratepayers claimed partial relief under s. 8 (1) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, against rates in respect of a convalescent home conducted by them for the benefit of their members, and the questions for the court were (i) whether the ratepayers were an organization " established or conducted for profit," and (ii) whether their main objects were " charitable or otherwise concerned with the advancement of . . social welfare ":—*Held*, (i) the ratepayers were not an organization established or conducted for profit because the earning of profits was purely incidental for this purpose; (ii) their main objects, however, were not charitable in the legal sense because they did not involve

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some benefit to a section of the community as opposed to benefit to individuals by reason of some private qualification, nor were they otherwise concerned with the advancement of social welfare because the benefits were confined to their members and were derived exclusively from members' contributions on an actuarial basis. Decision of the Divisional Court, (1957), *ante*, p. 157, affirmed. (Trustees of the National Deposit Friendly Society *v.* Skegness Urban District Council. C.A.) 567

14. Relief; organization concerned with advancement of social welfare; General Nursing Council for England and Wales; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The General Nursing Council for England and Wales was originally formed under the repealed Nurses Registration Act, 1919, and is now regulated by the Nurses Act, 1957. Under s. 2 (1) the council was under a duty to maintain a register of nurses and a roll of assistant nurses who satisfied the conditions of admission. Under the Act of 1957 provision was made for the training of nurses, penalties were provided for the false assumption of the title of registered or enrolled nurse, and restrictions were provided on the use of the title of nurse and assistant nurse. On the question whether the council was an organization the main objects of which were concerned with the advancement of social welfare within s. 8 (1) (*a*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955:—*Held*, the council was established to create a system of registration to ensure that the public should receive the services only of competent nurses, which was a purpose benefiting those members of the public who required nursing assistance, and, therefore, an object concerned with social welfare within s. 8 (1) (*a*) of the Act of 1955. (General Nursing Council for England and Wales *v.* St. Marylebone Borough Council. Ch.D.) ... 497

15. Relief; organization concerned with the advancement of education; promotion of efficiency among persons engaged in insurance; benefit to members, employers, and public; Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 8 (1) (*a*).—The objects of the Chartered Insurance Institute were set out in its charter, and the first object (stated in cl. 2 (*a*)) was: "To provide and maintain a central organization for the promotion of efficiency, progress and general development among persons engaged or employed in insurance, whether members of the institute or not, with a view not only to their own advantage but to rendering the conduct of such business more effective, safe and scientific, and securing and justifying the confidence of the public and employers by reliable tests and assurances of the competence and trustworthiness of persons engaged or employed in insurance." Other objects were to encourage and assist the study of subjects bearing on insurance, to publish a journal, to form a library for the use of members, to offer money and other prizes for essays on or research in insurance, to examine candidates for certificates of the institute, to promote personal and friendly intercourse between members, to exercise professional supervision and control over the members of the institute, and to safeguard their interests. The institute claimed relief from rates under s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, as being an organization whose main objects were "concerned with the advancement of . . . education . . ." The justices found that the institute was maintained for the purposes specified in cl. 2 (*a*) of its charter with a view to securing the competence of persons engaged or employed

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in insurance and that the institute was not entitled to the relief claimed on appeal:—*Held*, that the institute was not entitled to relief because (*per* LORD GODDARD, C.J., and BYRNE, J.) on the true construction of the charter the object of the institute was, not the advancement of education, but to benefit the profession of insurance generally, and (*per* DEVLIN, J.) on the justices, finding of fact the main purpose of the tuition and examination activities of the institute was to enable members of the profession of insurance to practice their profession to greater advantage. (Chartered Insurance Institute *v.* Corporation of London. Q.B.D.) 482

16. Valuation list; proposal to insert hereditament; Local Government Act, 1948, s. 40 (1) (*b*).—Section 40 (1) (*b*) of the Local Government Act, 1948 (which entitles a person aggrieved by a statement in a valuation list to make a proposal for the alteration of the list) relates to particulars respecting a hereditament already included in the list, and, therefore, under that paragraph a rating authority has no power to make a proposal for inserting in the valuation list a hereditament which has been omitted therefrom. *Semble: aliter* in the case of the valuation officer's powers under s. 40 (2). (John Walsh, Ltd. *v.* Sheffield City Council and Tranter (Valuation Officer); Tranter (Valuation Officer) *v.* Sheffield City Council. C.A.) 589

RENT CONTROL.

1. Rent tribunal; inquiry into own jurisdiction; disputed issues of fact; application for *certiorari* to quash decision of tribunal; no power of Divisional Court to intervene.—The tenant of premises referred her tenancy to a rent tribunal on the ground that the rent was excessive. It was contended on behalf of the landlord that the tribunal had no jurisdiction, as the premises had been let as business premises only and reliance was placed on a piece of paper which the landlord had inserted in the rent book. The tribunal found that there were facts which entitled them to proceed with the hearing, heard the reference, and reduced the rent. On motion for *certiorari* by the landlord to quash the decision of the tribunal as having been made without jurisdiction:—*Held*, that *certiorari* would not issue where there were disputed questions of fact and that it should not issue in the present case. *Per* LORD GODDARD, C.J., and BYRNE, J.: The evidence showed facts which entitled the tribunal to proceed with the hearing. *Per* DEVLIN, J.: It was not for the Divisional Court to go into the facts as they were advanced before the tribunal, since there was a conflict of fact which the court had no machinery to resolve. A rent tribunal, being an inferior court, could not be compelled to inquire into the facts which were said to give it jurisdiction, though it might often conveniently decide to do so, but such an inquiry, if made, was a purely domestic inquiry and would bind nobody. (R. *v.* Sheffield Area Rent Tribunal. *Ex parte* Purshouse. Q.B.D.) ... 553

2. Rent tribunal; jurisdiction; furnished letting; paying guest; "exclusive occupation"; exclusive right to use room as residence; access given to landlady at all times; Furnished Houses (Rent Control) Act, 1946, s. 2 (1).—P and his wife were joint owners of a house. Verbally and by a letter signed by F and addressed to Mrs. P, it was agreed that F should be "accommodated" as Mrs. P's "paying guest" in a furnished room on the upper floor of the house at an all-inclusive charge of £2 10*s*. per week; that Mrs. P should have

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access to the room " at all times "; and that F, whose two small children were to stay with her, would " keep the premises clean and tidy." F acknowledged " receipt of the keys and furnished belongings entrusted to " her. F, in common with other occupants of the house, was allowed the use of the bathroom and kitchen and her children had some meals in the dining room. On reference by F of her contract to a rent tribunal, the tribunal reduced the rent and gave her three months security of tenure. P applied for an order of *certiorari* to quash the decision of the tribunal as being in excess of jurisdiction on the ground that the contract, being one to accommodate a paying guest, did not come within s. 2 (1) of the Furnished Houses (Rent Control) Act, 1946, in that it did not give the person accommodated exclusive occupation of any part of the house:—*Held*, that F had exclusive possession of the room, the test being whether she had an exclusive right to use the room as a residence for herself. The fact that the landlady had the right of access at all times did not deprive F of such exclusive possession, as the landlady had no right to use the room as a residence for herself or to put someone else in it. The tribunal, therefore, had jurisdiction to entertain the reference, and *certiorari* would not issue. *Per* CASSELS, J.: " Paying guest " is not an accurate description of a person who has to do all her own work in connexion with the accommodation which she has and when the only thing with which she is provided is a little food. (R. *v.* Battersea, Wandsworth, Mitcham & Wimbledon Rent Tribunal. *Ex parte* Parikh. Q.B.D.) 132

3. Rent tribunal; jurisdiction; increase of contractual rent; Furnished Houses (Rent Control) Act, 1946, s. 2 (2), (3).—In 1949 a rent tribunal reduced the yearly rent of a flat, to which the Furnished Houses (Rent Control) Act, 1946, applied, from £413 to £339. Later the rent was increased by the tribunal to £393. In 1954 the landlords let the flat to the tenant at the rent which appeared in the register kept by the local authority under the Act of 1946, i.e., £393. In 1955, on the landlords' application made under s. 2 (3) of the Act of 1946, the tribunal increased the rent from £393 to £452 per annum. On the question whether the tribunal had jurisdiction to increase the contractual rent:—*Held* (LORD EVERSHED, M.R., dissenting): the rent tribunal had power to increase the contractual rent. (Villa D'Este Restaurant, Ltd. *v.* Burton. C.A.) 291

RIGHT OF WAY

1. Challenge to right of public to use way; path running over farm land; ploughing of land; Rights of Way Act, 1932, s. 1 (6).—The appellants applied to quarter sessions for a declaration that from November 28, 1953, there was no public right of way over certain farm land owned by them, a footpath over the land having been delineated on the map prepared by the county council under the National Parks and Access to the Countryside Act, 1949. The public had used a path over the land for some time, but there was no evidence of user for more than ten years prior to 1906. In 1906 there was an alteration in the method of ploughing, mechanical ploughs being then first introduced, and between 1906 and 1930 the whole field was ploughed and the path would disappear and re-appear accordingly. After 1930 the path was never used at all. Quarter sessions were of opinion that " the right of the public to use " the path was " brought into question " within the meaning of s. 1 (6) of the Rights of Way

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Act, 1932, by the ploughing, and that the path had "been actually enjoyed by the public as of right and without interruption" within the meaning of s. 1 (1) as amended for 20 years next before that date. On that ground they refused to make the declaration. On appeal to the Divisional Court by the owners of the land:—*Held*, that the ploughing up of the footpath was not to be regarded as an unequivocal act intending to challenge the right of the public, and that the first real challenge by the public to the use of the path was put forward in the present year. The appeal must, therefore, be allowed and the case remitted to quarter sessions with a direction to make the declaration sought. (Owen and Others *v.* Buckinghamshire County Council. Q.B.D.) 556

2. Statutory presumption of dedication; dates from which period of 20 years to be calculated; whether more than one bringing of right into question possible; no intention of landowner to allow public right of way; Rights of Way Act, 1932, s. 1 (1), s. 1 (6).—By s. 1 (1) of the Rights of Way Act, 1932, as amended by s. 58 of the National Parks and Access to the Countryside Act, 1949: "Where a way, not being of such a character that user thereof by the public could not give rise at common law to any presumption of dedication, upon or over any land has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, such way shall be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way." By s. 1 (6) the aforementioned period of 20 years shall be deemed and taken to be the period next before the time when the right of the public to use a way shall have been brought into question by notice . . . or otherwise." The appellant, a landowner, appealed to quarter sessions under s. 31 (3) of the National Parks and Access to the Countryside Act, 1949, seeking a declaration that there was no public right of way over certain land owned by him and known as the Ridgeway, a footpath over the land having been delineated on the map prepared by the county council under the Act. Quarter sessions found that the appellant at no time intended to allow the public to enjoy a right of way over the Ridgeway and that the right of the public to use the Ridgeway had been brought into question in 1914 by the locking of the gate at the south end, but that that right had never since been brought into question until measures were taken by the appellant to exclude the public from the Ridgeway in 1948 on the derequisitioning of the land after the war. They held that there was not sufficient evidence of user by the public before 1914 to establish dedication before that date, and that there was no evidence of user between 1940 and 1948, but that there was sufficient evidence of public user between 1914 and 1940 to show 20 years uninterrupted user within the meaning of s. 1 (6) of the Act of 1932 and they, accordingly, dismissed the appeal. On appeal by the landowner to the Divisional Court:—*Held*, (i) that, if there could be only one time of bringing the right into question, the first time when it was brought into question, namely 1914, would be material, but on the facts found there was no evidence of user sufficient to presume dedication before 1914; (ii) that, even if there could be a second bringing of the right into question, the second time would have been 1948, and, as there was no evidence of user for 20 years next before that date, no statutory presumption of dedication could arise in any event; (iii) that the finding that the appellant at no time

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intended to allow the public to enjoy a right of way over the Ridgeway was evidence that there was no intention during the relevant period, and that, therefore, the presumption of dedication never arose under s. 1 (1). On any view of the case, therefore, the appellant was entitled to succeed and to obtain the declaration which he sought. (Rothschild *v.* Buckinghamshire County Council. Q.B.D.) ... 558

ROAD TRAFFIC

1. Driving while under influence of drink or drug; "drug"; insulin; Road Traffic Act, 1930, s. 15 (1).—For the purposes of s. 15 (1) of the Road Traffic Act, 1930, which makes it an offence for any person to drive or attempt to drive a motor vehicle on a road or other public place while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, "drug" includes something given to cure or alleviate or assist an ailing body, e.g., insulin even though properly taken by a diabetic. *Per* LORD GODDARD, C.J.: "Drink" means, I think, alcoholic drink. (Armstrong *v.* Clark. Q.B.D.) 193

2. Insurance; right of driver to benefit of insurance effected by employer; right to indemnity against claims of negligence; implied terms in contract of service—No term is to be implied in the contract of employment of a driver of a motor vehicle either that he is entitled to be indemnified by his employers against claims or proceedings for acts done in the course of his employment or that he is entitled to the benefit of any insurance which his employers either have effected, or, as reasonable and prudent men, should have effected, concerning accidents due to his driving without due care. (Lister *v.* Romford Ice & Cold Storage Co., Ltd. House of Lords) 98

3. Motor tractor; limit on overall width; towing of combine harvester; whether tractor and harvester one vehicle; Motor Vehicles (Construction and Use) Regulations, 1955 (S.I. 1955, No. 482), reg. 33; Motor Vehicles (Authorization of Special Types) General Order, 1955 (S.I. 1955, No. 1038), art 10, as amended by Motor Vehicles (Authorization of Special Types) Order, 1956 (S.I. 1956, No. 1265), art. 3 (2).—By s. 2 (1) of the Road Traffic Act, 1930, motor tractors are defined as "mechanically propelled vehicles which are not constructed themselves to carry any load . . . and the weight of which unladen does not exceed seven *tons* and a quarter." By reg. 3 (1) of the Motor Vehicles (Construction and Use) Regulations, 1955, a "land implement" is defined as "any implement or machinery used as a land locomotive or a land tractor in connexion with agriculture, grass cutting, forestry, land levelling, dredging or similar operations . . .". The appellants were agricultural engineers, and one of their employees drove on a road a motor tractor which was towing a "land implement," namely, a combine harvester, the property of a farmer. The combine harvester was 11 *ft.* 4 *ins.* in width, but, owing to the position of the tractor when hauling the harvester, the overall width of the two vehicles together was 12 *ft.* 6 *ins.* The combine harvester relied for power on the tractor and was not in itself a mechanically propelled vehicle. An information was preferred charging the appellants with using on a road a vehicle, namely, the motor tractor towing the combine harvester, which vehicle failed to comply with art. 10 of the Motor Vehicles (Authorization of Special Types) General Order, 1955, as amended. That article permitted (subject to

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certain restrictions) "the use on roads of land tractors," which, by s. 3 (1) of the regulations, comprised motor tractors satisfying certain requirements as to design, use and ownership, constructed for the combined purposes of reaping and threshing, although they did not comply with reg. 33 of the Motor Vehicles (Construction and Use) Regulations, 1955, which limited the overall width of a motor tractor to seven *feet* six *inches*. The motor tractor did not in itself offend against reg. 33, but the restrictions specified in art. 10 were not fulfilled, and that article did not except the combined entity of the two vehicles from the limitation with regard to overall width imposed by reg. 33. The justices held that the motor tractor and the combine harvester were one vehicle and convicted the appellants:—*Held*, that the motor tractor and combine harvester remained two vehicles, although one provided power for the other when they were coupled together and that there was, therefore, no offence against reg. 33 and the conviction must be quashed. (William Gwennap (Agricultural) Ltd. and Another *v.* Amphlett. Q.B.D.) 487

4. One-way traffic for all vehicles; order made by local authority; Town Police Clauses Act, 1847, s. 21; Road Traffic Act, 1930, s. 46 (2).—P corporation made an order which in effect created one-way traffic in certain streets for all vehicles for a period of six months from April 19, 1957, to October 19, 1957, inclusive. The order was purported to be made in exercise of the corporation's powers under s. 21 of the Town Police Clauses Act, 1847 (which did not require confirmation by the Minister of Transport) and not under s. 46 (2) of the Road Traffic Act, 1930 (which required confirmation by the Minister of Transport after holding, if he thought fit, a public inquiry). The plaintiff company, which owned an hotel in one of the affected streets, contended that the order was *ultra vires* the powers of the corporation and void:—*Held*, the procedure of making an order under s. 21 of the Act of 1847 for a short period to test the efficiency of the one-way traffic as a preliminary to an order under s. 46 (2) of the Act of 1930 was a procedure which was neither desirable nor permissible, and, therefore, the order purported to be made under s. 21 of the Act of 1847 was *ultra vires* the powers of the corporation and void. (Brownsea Haven Properties, Ltd. *v.* Poole Corporation. Ch.D.) 571

SALMON AND FRESHWATER FISHERIES

Fish; salmon; prohibited period for sale; possession during prohibited period for sale after it; Salmon and Freshwater Fisheries Act, 1923, s. 30 (1).—In January, 1956, a number of salmon were lawfully caught in a river by rod and line and were deposited with fishmongers on the terms that, if the fishermen did not require them to return the fish before February 1, the fishmongers were to be at liberty to sell the fish as agents for the fishermen. On January 31, 1956, the fishmongers, without the authority of the fishermen and after their normal business hours, dispatched the fish to London for sale on an agency basis. The fish arrived in London on February 1. The fishmongers were charged with having the salmon in their possession for sale on January 31, 1956, contrary to s. 30 (1) of the Salmon and Freshwater Fisheries Act, 1923, which prohibits any person having salmon in his possession for sale between August 31 and February 1 following. The justices, who were satisfied that there was no intention on the part of the fishmongers to sell the salmon before February 1, dismissed the information. On appeal by the prosecutor:—*Held*, that

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s. 30 (1) prohibited only the possession of salmon between August 31 and February 1 for sale during that period; on the facts the possession by the fishmongers before February 1 was not for the purpose of sale during the prohibited period, but was for the purpose of the fish being kept pending call by the fishermen; and, therefore, the decision of the justices was right. (Birkett *v.* McGlassons, Ltd. Q.B.D.) 126

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THEATRES

1. Limit on right to sell liquor; order and decency; presence of licensed premises in neighbourhood; Theatres Act, 1843, s. 9.—By s. 9 of the Theatres Act, 1843: "The . . . justices . . . shall make suitable rules for ensuring order and decency at the several theatres licensed by them within their jurisdiction . . ." Rule 3 of the theatrical licence rules of the Flint county council licensing (stage plays) committee provided: "No spiritous liquors, wine, ale, beer, porter, cider, perry, or tobacco shall be sold or disposed of in the theatre". The manager of a theatre in Flintshire, which for a number of years had held a licence for the performace of stage plays and the sale of intoxicating liquor at the theatre, applied to the county council licensing (stage plays) committee for the renewal of his licence. The committee granted only a restricted licence subject to their general rules, including r. 3 (*supra*), on the ground that a large hotel with a number of bars adjoined the theatre. On notice by the manager for *mandamus* requiring the committee to grant him the unrestricted licence which he had held in former years, or, alternatively, to delete r. 3:—*Held*, that the motion failed, since the presence of licensed premises in proximity to the theatre was a consideration which the committee were entitled to take into account in deciding whether to impose the restriction, and it could not, therefore, be said that no restriction should have been attached to the licence on the ground that no question of order or decency within the meaning of s. 9 arose. *Per* LORD GODDARD, C.J.: Exactly the same considerations may be taken into account on an application for renewal as on an application for a licence for the first time. *Semble*: a rule prohibiting the sale of tobacco is no longer a "suitable rule for ensuring order and decency" in a theatre within s. 9 of the Theatres Act, 1843, in the absence of some particular good reason. (R. *v.* Flint County Council Licensing (Stage Plays) Committee. *Ex parte* Barratt. Q.B.D.) 1

2. Limit on right to sell liquor and tobacco; order and decency; proximity to theatre of a licensed house; Theatres Act, 1843, s. 5, s. 9.—By s. 9 of the Theatres Act, 1843: "The . . . justices . . . shall make suitable rules for ensuring order and decency at the several theatres licensed by them within their jurisdiction." The power to licence theatres originally conferred on the justices by s. 5 of the Theatres Act, 1843, together with this power given by s. 9, has been transferred to the council of a county or county borough by s. 7 of the Local Government Act, 1888, and a set of rules under s. 9 are now in use throughout England and Wales. Rule 3 of these rules provides that: "No spiritous liquors, wine, ale, beer, porter, cider, perry, or tobacco shall be sold or disposed of in the theatre". The applicant, the manager of a theatre, which for many years had had a licence for the performance of stage plays with r. 3 deleted from the rules applicable

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to that theatre and also a licence for the sale of intoxicating liquor and tobacco at the theatre, applied to the licensing committee for the renewal of the stage plays licence. At the same time application was made on behalf of a neighbouring theatre, which for some years had had only a licence subject to r. 3 and so had no liquor licence, for an unrestricted licence (i.e., one with r. 3 deleted). The neighbouring theatre was granted only a restricted licence, and the applicant's application, which was unopposed and on which no argument was heard, was considered next. The committee decided that, although there had never been any cause for complaint against the applicant's theatre, the grounds on which they had restricted the licence granted to the neighbouring theatre, namely, that there were adequate licensed premises nearby, applied to the applicant's theatre with even greater force, since it was adjacent to a large hotel with a number of bars. The committee felt that they must be consistent in order to do justice between applicants, and, accordingly, made the applicant's licence subject to r. 3. The applicant applied for *mandamus* directing the committee to re-hear his application for an unrestricted licence, and now appealed from the dismissal of his motion for *mandamus* by the Divisional Court:—*Held*, a *mandamus* should be granted because:—(i) the application for a licence not subject to r. 3 should have been considered on its merits and the restriction against the sale of intoxicating liquor and tobacco should not have been imposed merely for consistency with the imposition of a like restriction on the previous application in relation to the other theatre; (ii) the committee ought to have considered the long and blameless record of the theatre and the facts that unrestricted licences had been granted for over fifty years and that there had been no change in circumstances; (iii) (*per* SINGLETON AND PARKER, L.JJ.) there was no evidence that the imposition of the condition would promote order and decency in the theatre. R. *v.* West Riding of Yorkshire County Council (1896) 60 J.P. 550 and R. *v.* Sheerness Urban District Council (1898) 62 J.P. 563 explained and distinguished. Sharp *v.* Wakefield (1891) 55 J.P. 197 considered, and observations of LORD HALSBURY applied by PARKER, L.J. *Per curiam*: There is an implied power to impose restrictions, by imposing conditions on the grant of a theatre licence, conferred on the licensing authority by s. 5 of the Theatres Act, 1843. This power is additional to the rule-making power conferred by s. 9 of the Act and is not limited to matters affecting order and decency. *Per* SINGLETON, L.J.: A committee intending to change the terms of a licence when there is no opposition to its renewal should state their intention, ask the applicant if he would like to be represented and have argument on the matter, and offer to adjourn the application so that the applicant could arrange this. Decision of the DIVISIONAL COURT (1957) 121 J.P. 1 reversed. (R. *v.* Flint County Council Licensing (Stage Plays) Committee. *Ex parte* Barratt. C.A.) 80

TOWN AND COUNTRY PLANNING

1. Enforcement notice; no appeal by occupier; subsequent summons for default in complying with requirements of notice; evidence tendered by occupier to show user of land prior to his occupation; whether evidence admissible when matter not raised by appeal; Town and Country Planning Act, 1947, s. 23 (4), s. 24 (3).—On January 18, 1956, an enforcement notice was served by the local planning authority on the occupier of certain land requiring him to discontinue within 28 days the use of the land for car breaking, car repairs, and car sales.

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The occupier did not appeal against the notice under s. 23 (4) of the Town and Country Planning Act, 1947, and did not discontinue the use of the land for those purposes. On December 4, 1956, an information was preferred on behalf of the local planning authority against the occupier, under s. 24 (3) of the Act, alleging that he had unlawfully made default in complying with the requirements of the enforcement notice. At the hearing of the information the occupier sought to call evidence to show user of the land prior to the date when he became occupier in order to prove that his use of the land did not constitute development within the meaning of the Act, but the justices refused to admit the evidence on the ground that it was not open to him to raise in proceedings under s. 24 (3) of the Act matters which he could have raised on an appeal under s. 23 (4) and they convicted the appellant. On appeal:—*Held*, (i) that the justices were right in holding that, if there was a matter which could have been raised on appeal under s. 23 (4) and had not been so raised, that matter could not be raised as a defence to a prosecution for contravention of the enforcement notice. Perrins *v.* Perrins (1951) 115 J.P. 346 applied; (ii) that the contention that the user did not constitute development within the meaning of the Act could have been taken on appeal against the enforcement notice. East Riding County Council *v.* Park Estate (Bridlington), Ltd. (1956) 120 J.P. 380, applied. Keats *v.* London County Council (1954) 118 J.P. 548 not followed, as having been overruled by East Riding County Council *v.* Park Estate (Bridlington), Ltd. (*supra*). (Norris *v.* Edmonton Corporation. Q.B.D.) 513

2. Enforcement notice; persistent breach of notice; injunction sought by Attorney-General in relator action; jurisdiction; Town and Country Planning Act, 1947, s. 24 (3).—The defendant was the owner of certain land for the use of which as a caravan site for human habitation he had twice been refused planning permission. In May, 1952, the local planning authority served an enforcement notice on him under the Town and Country Planning Act, 1947, s. 23, requiring him to discontinue the use of the land for the parking of caravans for human habitation and to remove the caravans parked on the land. The defendant's appeal against this notice was dismissed. In September, 1953, he was convicted by a magistrates' court, under s. 24 (3) of the Act of 1947, of contravening the enforcement notice, and was fined £20. In January, 1954, he was convicted under s. 24 (3) of the Act of 1947 of continuing the prohibited use of the land after his previous conviction, and was fined £30. In April, 1954, he was again convicted, and fined £75 and imprisoned for one month in default of payment. In October, 1954, a writ was issued by the Attorney-General at the relation of the local planning authority for, *inter alia*, an injunction perpetually restraining him from using, or permitting to be used, the land as a caravan site without permission. In December, 1954, the defendant was again convicted of continuing the prohibited use of the land, and was fined £100, and was imprisoned for three months in default of payment. He had since continued to use the land in breach of the Act of 1947. In the relator action:—*Held*, (i) as the Attorney-General was seeking to enforce a public right, the court had jurisdiction to grant an injunction although that right had been given by a statute which prescribed penalties for its infringement; (ii) this was a proper case for granting a perpetual injunction restraining the defendant from using the land as a caravan

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site for human habitation since, although it was relevant to consider the other remedies open to the Attorney-General or the relator which might be just as effective, the choice of remedy in such a case as this (where the only substantial ground for not granting an injunction was that there were other remedies available) was a matter for the Attorney-General's administrative discretion rather than one for judicial discretion, and the court would be slow to interfere with the Attorney-General's decision that the ordinary remedies would no longer prevail. (Attorney-General (on Relation of Hornchurch U.D.C.) *v.* Bastow. Q.B.D.) 171

3. Enforcement notice; validity; wrong factual basis; development alleged to have been carried out without planning permission; permission originally granted for a limited period, since expired; no appeal to justices against notice; right to question validity in High Court; Town and Country Planning Act, 1947, s. 23 (2), (4).—In February, 1949, F placed on land belonging to him caravans for residential purposes. As this constituted development of the land he applied for planning permission from the local planning authority which was refused. On appeal to the Minister, permission to use the land as a caravan site for six months from February 22, 1950, was granted. F continued to use the land as a caravan site after the expiration of the six months, and in July, 1952, the local planning authority served an enforcement notice on him which stated that "whereas on or about February 1, 1949, [F's land] was developed by placing thereon caravans for residential purposes. And whereas such development . . . was carried out without the grant of planning permission required under part III of the Town and Country Planning Act, 1947. Now therefore [the local planning authority] in exercise of the powers contained in s. 23 and s. 24 of the said Act of 1947 hereby give you notice to remove all caravans from the site within fifty-five days" from the date when the notice took effect. F, however, continued to use the land as a caravan site. He did not appeal against the notice, as he was entitled to, under s. 23 (4) of the Act of 1947, and the local planning authority did not prosecute him under s. 24 (3). In December, 1955, F brought an action for a declaration that the enforcement notice was invalid:—*Held*, (i) once permission for a use of land had been given, albeit subject to conditions, it could not be said that use under that permission constituted development without permission; the enforcement notice, although it sufficiently specified the development complained of for the purpose of s. 23 (2) of the Act of 1947, falsely stated that the development had been carried out without planning permission, since the Minister had granted permission, albeit for only six months; and, therefore, the notice lacked a true factual basis and was invalid. *Dicta* of LORD COHEN and LORD EVERSHED in East Riding County Council *v.* Park Estate (Bridlington), Ltd., [1956] 2 All E.R. at pp. 679, 681, 682; 120 J.P. at pp. 389, 392 applied; (ii) the fact that F did not appeal to a court of summary jurisdiction under s. 23 (4) of the Act of 1947 did not preclude him from maintaining in the present action his claim for a declaration that the enforcement notice was invalid. Perrins *v.* Perrins (1951) 115 J.P. 346 distinguished. (Francis *v.* Yiewsley and West Drayton Urban District Council. Q.B.D.) 276

4. Statutory undertakers; "operational land"; land in which interest held for purpose of carrying on undertaking; land not yet used by undertakers; land not contiguous to land used; Town and Country

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Planning Act, 1947, s. 119 (1).—By s. 119 (1) of the Town and Country Planning Act, 1947, " operational land " is defined as follows: " ' Operational land,' in relation to any statutory undertakers, means land which is used for the purpose of carrying on the undertakings of those undertakers and land in which an interest is held for that purpose, not being land which, in respect of its nature and situation, is comparable together with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings." The term " statutory undertakings " is defined as meaning persons authorized by any enactment to carry on, among other undertakings, any undertaking for the supply of gas." A gas board, who were statutory undertakers within the aforementioned definition, desired to build a gasification plant on land which had become vested in them, but which they had not yet used for that purpose of their undertaking. Permission was refused by the local planning authority on the ground, *inter alia*, that the land lay within a green belt area. The board appealed from the refusal, and the matter was referred to the Minister of Fuel and Power, under s. 119 (2) of the Act, for the determination of the question whether the land was " operational land " within the definition. The Minister caused a local inquiry to be held, and determined that the land was " operational land ", giving reasons for his decision. On applications by the local planning authority for an order of *certiorari* to quash the determination of the Minister:—*Held*, that " operational land " as defined in s. 119 (1) included land in which statutory undertakers held an interest for the purpose of carrying on their undertaking (i) although they had not begun to use it for that purpose, or (*per* DEVLIN, J.) had not obtained power to use it, and (ii) (*per* BYRNE and DEVLIN, JJ.), although the land was not contiguous to other land used for the purposes of a statutory undertaking, and, therefore, *certiorari* would not issue to quash the Minister's determination. *Per* LORD GODDARD, C.J. The question whether land is " comparable rather with land in general than with land which is used . . . for the purpose of the carrying on of statutory undertakings " within the definition of " operational land " in s. 119 (1) of the Act of 1947 is a question of fact. (R. *v.* Minister of Fuel and Power and Another. *Ex parte* Warwickshire County Council. Q.B.D.) 491

W

WAR DAMAGE

Cost of works; making good war damage; front wall of house damaged by enemy action; party walls repaired as part of work of re-building front wall; work executed to conform with London Building Acts; inclusion of cost of reinstating party walls in cost of works payment; War Damage Act, 1943, s. 8 (2).—A house about 200 years old was part of a continuous row of buildings and consisted of a basement, ground floor and four upper floors. As the result of war damage in 1940 and 1944 the front wall of the house required to be entirely rebuilt, but the party walls had not been damaged. In 1948 the county council served dangerous structure notices in respect of the house under the London Building Acts Amendment Act, 1939, and the re-building was carried out according to the district surveyor's requirements under the London Building Acts. When the front wall was taken down it was found that the party walls were in too dangerous a condition for the new front wall to be block-bonded into them and the surveyor required the party walls to be partially pulled down and re-built as part of the work required to the front wall. The

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owners of the house claimed a cost of works payment under the War Damage Act, 1943, in a specification of work carried out in reinstatement of war damage which included the re-building of the front wall and the party walls. The War Damage Commission determined that the cost of works payment to be made under s. 8 (2) of the Act was not to include the cost of repairing the party walls:—*Held*, the cost of reinstating the party walls in accordance with the requirements of the district surveyor became part and parcel of the work required to the front wall, and was, therefore, part of the proper cost of making good the war damage to the front wall within s. 8 (2). Accordingly, the cost of the reinstatement of the party walls should be included in the cost of works payment. (*Re* 34, Bruton Street, Westminster. Ch.D.) 40

WEIGHTS AND MEASURES

Pre-packed articles; possession for sale; deficiency in weight; liability of owners and manager of shop; "actual offender"; Sale of Food (Weights and Measures) Act, 1926, s. 12 (5).—The appellants were a limited company who owned shops in various localities. One of their shops was managed by the second respondent, who on one occasion, before going on leave, made up certain pre-packed articles of food, which, during his absence, were weighed by an inspector of weights and measures and were then found to be deficient in weight. On a second occasion an article which had not been made up by the second respondent, but the weight of which he admitted he ought to have checked and had failed to do so, was found to be deficient in weight. The appellants were convicted of being in possession on the two occasions of pre-packed articles of food which were not made up in one of the quantities specified in s. 4 (2) of the Sale of Food (Weights and Measures) Act, 1926. They preferred informations under s. 12 (5) of the Act against the second respondent, their manager, alleging that he was the "actual offender" within the meaning of the subsection and that he had committed the offences without any consent, connivance, or wilful default on their part. The justices dismissed the informations, but did not find that any other person had been appointed to manage the shop in the second respondent's absence. On appeal by the appellant:—*Held*, that the "actual offender" within s. 12 (5) of the Act meant the person whose act or default had brought about the particular acts which constituted the offence; in the present case that was the second respondent; and was in possession of the goods for sale on both occasions. (Melias *v.* Preston and Another. Q.B.D.) 444

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